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Rev

EN BLOC AMENDMENTS TO H.R. 6
OFFERED BY MR. BISHOP OF NEW YORK (FOR
HIMSELF AND MR. MARKEY OF MASSACHUSETTS)

In section 109(2), at the end of the quoted material
insert the following new paragraph:

- 1 “(4) All housing constructed under the military
2 housing privatization initiative of the Department of
3 Defense shall, to the maximum extent practicable—
4 “(A) meet Federal building energy effi-
5 ciency standards under this section; and
6 “(B) include Energy Star appliances.

In title I, subtitle A, add at the end the following
new section:

7 **SEC. 112. MODEL BUILDING ENERGY CODE COMPLIANCE**
8 **GRANT PROGRAM.**

- 9 (a) **IN GENERAL.**—The Secretary shall carry out a
10 program to provide grants to each State that the Sec-
11 retary determines, with respect to new buildings in the
12 State, achieves at least a 90-percent rate of compliance
13 (based on energy performance) with the most recent model
14 building energy codes.

1 (b) GUIDELINES.—Not later than 180 days after the
2 date of enactment of this Act, the Secretary shall issue
3 guidelines that standardize criteria by which a State that
4 seeks to receive a grant under this section may—

5 (1) verify compliance with applicable model
6 building energy codes; and

7 (2) demonstrate eligibility to receive a grant
8 under this section.

9 (c) LOCAL GOVERNMENT CODES.—In the case of a
10 State in which building energy codes are established by
11 local governments—

12 (1) A local government may—

13 (A) apply for a grant under this section;
14 and

15 (B) verify compliance, and demonstrate eli-
16 gibility, for the grant under subsection (b); and

17 (2) if the Secretary determines that the local
18 government is eligible to receive a grant, the Sec-
19 retary may provide a grant to the local government.

20 (d) USE OF FUNDS.—Funds from a grant provided
21 under this section may be used only to carry out activities
22 relating to the implementation of building energy codes
23 and beyond-code building practices.

24 (e) AUTHORIZATION OF APPROPRIATIONS.—

1 (1) IN GENERAL.—There is authorized to be
2 appropriated to carry out this section \$25,000,000
3 for each of fiscal years 2006 through 2010.

4 (2) SET ASIDE.—Of the amounts authorized to
5 be appropriated under paragraph (1), the Secretary
6 may use not more than \$500,000 for each fiscal
7 year—

8 (A) to develop compliance guidelines;

9 (B) to train State and local officials; and

10 (C) to administer grants provided under
11 this section.

In section 131(a), amend the proposed section
324A(3) to read as follows:

12 “(3) preserve the integrity of the Energy Star
13 label by—

14 “(A) regularly updating Energy Star cri-
15 teria; and

16 “(B) ensuring, in general, that—

17 “(i) not more than 25 percent of
18 available models in a product class receive
19 the Energy Star designation; and

20 “(ii) Energy Star designated products
21 and buildings are at least 10 percent more
22 efficient than—

1 “(I) appliance standards in effect
2 on the date of enactment of this sec-
3 tion; and

4 “(II) the most recent model en-
5 ergy code;

 In section 133(a)(2), add at the end the following
new paragraphs:

6 “(45)(A) The term ‘commercial prerinse spray
7 valve’ means a handheld device designed and mar-
8 keted for use with commercial dishwashing and ware
9 washing equipment that sprays water on dishes, flat-
10 ware, and other food service items for the purpose
11 of removing food residue before cleaning the items.

12 “(B) The term ‘commercial prerinse spray
13 valve’ may include (as determined by the sec-
14 retary by rule) products—

15 “(i) that are extensively used in con-
16 junction with commercial dishwashing and
17 ware washing equipment;

18 “(ii) the application of standards to
19 which would result in significant energy
20 savings; and

21 “(iii) the application of standards to
22 that would meet the criteria specified in
23 subsection (o)(4).

1 “(C) The term ‘commercial prerinse spray
2 valve’ may exclude (as determined by the sec-
3 retary by rule) products—

4 “(i) that are used for special food
5 service applications;

6 “(ii) that are unlikely to be widely
7 used in conjunction with commercial dish-
8 washing and ware washing equipment; and

9 “(iii) the application of standards to
10 which would not result in significant en-
11 ergy savings.

12 “(46) The term ‘dehumidifier’ means a self-con-
13 tained, electrically operated, and mechanically en-
14 cased assembly consisting of—

15 “(A) a refrigerated surface (evaporator)
16 that condenses moisture from the atmosphere;

17 “(B) a refrigerating system, including an
18 electric motor;

19 “(C) an air-circulating fan; and

20 “(D) means for collecting or disposing of
21 the condensate.”.

 In section 133(b)(1), insert after the proposed para-
graph (13) the following new paragraphs:

22 “(14) Test procedures for dehumidifiers shall be
23 based on the test criteria used under the Energy Star Pro-

1 gram Requirements for Dehumidifiers developed by the
 2 Environmental Protection Agency, as in effect on the date
 3 of enactment of this paragraph unless revised by the Sec-
 4 retary pursuant to this section.

5 “(15) The test procedure for measuring flow rate for
 6 commercial prerinse spray valves shall be based on Amer-
 7 ican Society for Testing and Materials Standard F2324,
 8 entitled ‘Standard Test Method for Prerinse Spray
 9 Valves.’”.

In section 133(c), at the end of the quoted material
 insert the following new subsections:

10 “(ee) DEHUMIDIFIERS.—(1) Dehumidifiers manufac-
 11 tured on or after October 1, 2007, shall have an Energy
 12 Factor that meets or exceeds the following values:

“Product Capacity (pints/day):	Minimum Energy Factor (Liters/kWh)
.....	1.00
> 25 -	1.20
> 35 -	1.30
> 54 - < 75	1.50
.....	2.25.

13 “(2)(A) Not later than October 1, 2009, the Sec-
 14 retary shall publish a final rule in accordance with sub-
 15 sections (o) and (p), to determine whether the standards
 16 established under paragraph (1) should be amended.

17 “(B) The final rule shall contain any amend-
 18 ment by the Secretary and shall provide that the
 19 amendment shall apply to products manufactured on
 20 or after October 1, 2012.

1 “(C) If the Secretary does not publish an
 2 amendment that takes effect by October 1, 2012, de-
 3 humidifiers manufactured on or after October 1,
 4 2012, shall have an Energy Factor that meets or ex-
 5 ceeds the following values:

“Product Capacity (pints/day):	Minimum Energy Factor (Liters/kWh)
.....	1.20
> 25 -	1.30
> 35 -	1.40
> 45 -	1.50
> 54 - < 75	1.60
.....	2.5.

6 “(ff) COMMERCIAL PRERINSE SPRAY VALVES.—
 7 Commercial prerinse spray valves manufactured on or
 8 after January 1, 2006, shall have a flow rate less than
 9 or equal to 1.6 gallons per minute.

10 “(gg) STANDARDS FOR CERTAIN FURNACES.—(1)
 11 Notwithstanding subsection (f) and except as provided in
 12 paragraphs (2) and (3), a furnace (including a furnace
 13 designed solely for installation in a mobile home) manufac-
 14 tured 3 or more years after the date of enactment of this
 15 subsection shall have an annual fuel utilization efficiency
 16 of—

17 “(A) for natural gas- and propane-fired equip-
 18 ment, not less than 80 percent; and

19 “(B) for oil-fired equipment not less than 83
 20 percent.

21 “(2)(A) Notwithstanding subsection (f) and except as
 22 provided in paragraph (3)—

1 “(i) a boiler (other than a gas steam boiler)
2 manufactured 3 or more years after the date of en-
3 actment of this subsection shall have an annual fuel
4 utilization efficiency of not less than 84 percent; and

5 “(ii) a gas steam boiler manufactured 3 or
6 more years after the date of enactment of this sub-
7 section shall have an annual fuel utilization effi-
8 ciency of not less than 82 percent.

9 “(B)(i) Notwithstanding subsection (f), if, after the
10 date of enactment of this subsection, the Governor of a
11 cold climate State files with the Secretary a notice that
12 the State has implemented a requirement for an annual
13 fuel utilization efficiency of not less than 90 percent for
14 furnaces (other than boilers and furnaces designed solely
15 for installation in a mobile home or boiler), the annual
16 fuel utilization efficiency of a furnace sold in that State
17 shall be not less than 90 percent.

18 “(ii) If a State described in clause (i) fails to imple-
19 ment or reasonably enforce (as determined by the Sec-
20 retary) annual fuel utilization efficiency in accordance
21 with that clause, the annual fuel use efficiency for fur-
22 naces (other than boilers and furnaces designed solely for
23 installation in a mobile home or boiler) in that State shall
24 be the fuel utilization efficiency established under para-
25 graph (1).

1 “(3)(A) Not later than 5 years after the date on
2 which a standard for a product under this subsection takes
3 effect, the Secretary shall promulgate a final rule to deter-
4 mine whether that standard should be amended.

5 “(B) If the Secretary determines that a standard
6 under subparagraph (A) should be amended—

7 “(i) the final rule promulgated pursuant to sub-
8 paragraph (A) shall contain the new standard; and

9 “(ii) the new standard shall apply to any prod-
10 uct manufactured after the date that is 5 years after
11 the date on which the final rule is promulgated.”.

 In section 134(b), in the quoted material, insert at
the end the following new paragraphs:

12 “(6) In the case of dehumidifiers covered under
13 section 325(ee), the Commission shall not require an
14 Energy Guide label.

15 “(7)(A) Not later than July 1, 2006, the Com-
16 mission shall prescribe by rule, pursuant to this sec-
17 tion, labeling requirements for the electricity used by
18 ceiling fans to circulate air in a room.

19 “(B) The requirements shall be based on the
20 test procedure and labeling requirements contained
21 in the Energy Star Program Requirements for Resi-
22 dential Ceiling Fans, version 2.0, issued by the En-
23 vironmental Protection Agency, except that third

1 party testing and other non-labeling requirements
2 shall not be promulgated unless the Commission de-
3 termines the requirements are necessary to achieve
4 compliance.

5 “(C) The rule shall apply to products manufac-
6 tured after the later of—

7 “(i) January 1, 2007; or

8 “(ii) the date that is 60 days after the
9 final rule is prescribed.”.

In section 135, in the proposed subsection (h), insert
“, upon adoption of a standard under this Act” after
“fan light kits”.

In title I, subtitle, C, add at the end the following
new section:

10 **SEC. 137. COMMERCIAL PACKAGE AIR CONDITIONING AND**
11 **HEATING EQUIPMENT.**

12 (a) **DEFINITIONS.**—Section 340 of the Energy Policy
13 and Conservation Act (42 U.S.C. 6311) is amended—

14 (1) in paragraph (1)—

15 (A) by redesignating subparagraphs (D)
16 through (G) as subparagraphs (E) through (H),
17 respectively; and

18 (B) by inserting after subparagraph (C)
19 the following:

1 “(D) Very large commercial package air
2 conditioning and heating equipment.”;

3 (2) in paragraph (2)(B), by striking “small and
4 large”;

5 (3) by striking paragraphs (8) and (9) and in-
6 serting the following:

7 “(8)(A) The term ‘commercial package air con-
8 ditioning and heating equipment’ means air-cooled,
9 water-cooled, evaporatively-cooled, or water source
10 (not including ground water source) electrically oper-
11 ated, unitary central air conditioners and central air
12 conditioning heat pumps for commercial application.

13 “(B) The term ‘small commercial package air
14 conditioning and heating equipment’ means commer-
15 cial package air conditioning and heating equipment
16 that is rated below 135,000 Btu per hour (cooling
17 capacity).

18 “(C) The term ‘large commercial package air
19 conditioning and heating equipment’ means commer-
20 cial package air conditioning and heating equipment
21 that is rated at or above 135,000 Btu per hour and
22 below 240,000 Btu per hour (cooling capacity).

23 “(D) The term ‘very large commercial package
24 air conditioning and heating equipment’ means com-
25 mercial package air conditioning and heating equip-

1 ment that is rated at or above 240,000 Btu per hour
2 and below 760,000 Btu per hour (cooling capac-
3 ity).”;

4 (4) by redesignating paragraphs (10) through
5 (18) as paragraphs (9) through (17), respectively;
6 and

7 (5) in paragraph (10) (as redesignated by sub-
8 paragraph (D)), by inserting “, except for gas unit
9 heaters and gas duct furnaces” after “furnaces”.

10 (b) STANDARDS.—Section 342(a) of the Energy Pol-
11 icy and Conservation Act (42 U.S.C. 6313(a)) is
12 amended—

13 (1) in the subsection heading, by striking
14 “Small and Large” and inserting “Small, Large,
15 and Very Large”;

16 (2) in paragraph (1), by inserting “but before
17 January 1, 2010,” after “January 1, 1994,”;

18 (3) in paragraph (2), by inserting “but before
19 January 1, 2010,” after “January 1, 1995,”;

20 (4) in paragraph (4), by inserting “, except for
21 a gas unit heater or gas duct furnace,” after “boil-
22 er”;

23 (5) in paragraph (6)—

24 (A) in subparagraph (A)—

25 (i) by inserting “(i)” after “(A)”;

1 (ii) by striking "the date of enactment
2 of the Energy Policy Act of 1992" and in-
3 serting "January 1, 2010";

4 (iii) by inserting after "large commer-
5 cial package air conditioning and heating
6 equipment" the following: "and very large
7 commercial package air conditioning and
8 heating equipment, or if ASHRAE/IES
9 Standard 90.1, as in effect on October 24,
10 1992, is amended with respect to any";
11 and

12 (iv) by adding at the end the fol-
13 lowing:

14 "(ii) If ASHRAE/IES Standard 90.1
15 is not amended with respect to small com-
16 mercial package air conditioning and heat-
17 ing equipment, large commercial package
18 air conditioning and heating equipment,
19 and very large commercial package air con-
20 ditioning and heating equipment during
21 the 5-year period beginning on the effective
22 date of a standard, the Secretary may ini-
23 tiate a rulemaking to determine whether a
24 more stringent standard would result in
25 significant additional conservation of en-

1 ergy and is technologically feasible and
2 economically justified.

3 “(iii) This subparagraph does not
4 apply to gas-fired warm-air furnaces, gas-
5 fired package boilers, storage water heat-
6 ers, gas unit heaters, or gas duct furnaces
7 manufactured 5 or more years after the
8 date of enactment of the National Energy
9 Efficiency Policy Act of 2005.”; and

10 (B) in subparagraph (C)(ii), by inserting
11 “and very large commercial package air condi-
12 tioning and heating equipment” after “large
13 commercial package air conditioning and heat-
14 ing equipment”; and

15 (6) by adding at the end the following:

16 “(7) Each small commercial package air condi-
17 tioning and heating equipment manufactured on or
18 after January 1, 2010, shall meet the following
19 standards:

20 “(A) The minimum energy efficiency ratio
21 of air-cooled central air conditioners at or above
22 65,000 btu per hour (cooling capacity) and less
23 than 135,000 btu per hour (cooling capacity)
24 shall be—

1 “(i) 11.2 for equipment with no heat-
2 ing or electric resistance heating; and

3 “(ii) 11.0 for equipment with all other
4 heating system types that are integrated
5 into the equipment (at a standard rating
6 of 95 degrees F db).

7 “(B) The minimum energy efficiency ratio
8 of air-cooled central air conditioner heat pumps
9 at or above 65,000 btu per hour (cooling capac-
10 ity) and less than 135,000 btu per hour (cool-
11 ing capacity) shall be—

12 “(i) 11.0 for equipment with no heat-
13 ing or electric resistance heating; and

14 “(ii) 10.8 for equipment with all other
15 heating system types that are integrated
16 into the equipment (at a standard rating
17 of 95 degrees F db).

18 “(C) The minimum coefficient of perform-
19 ance in the heating mode of air-cooled central
20 air conditioning heat pumps at or above 65,000
21 Btu per hour (cooling capacity) and less than
22 135,000 Btu per hour (cooling capacity) shall
23 be 3.3 (at a high temperature rating of 47 de-
24 grees F db).

1 “(8) Each large commercial package air condi-
2 tioning and heating equipment manufactured on or
3 after January 1, 2010, shall meet the following
4 standards:

5 “(A) The minimum energy efficiency ratio
6 of air-cooled central air conditioners at or above
7 135,000 btu per hour (cooling capacity) and
8 less than 240,000 Btu per hour (cooling capac-
9 ity) shall be—

10 “(i) 11.0 for equipment with no heat-
11 ing or electric resistance heating; and

12 “(ii) 10.8 for equipment with all other
13 heating system types that are integrated
14 into the equipment (at a standard rating
15 of 95 degrees F db).

16 “(B) The minimum energy efficiency ratio
17 of air-cooled central air conditioner heat pumps
18 at or above 135,000 Btu per hour (cooling ca-
19 pacity) and less than 240,000 btu per hour
20 (cooling capacity) shall be—

21 “(i) 10.6 for equipment with no heat-
22 ing or electric resistance heating; and

23 “(ii) 10.4 for equipment with all other
24 heating system types that are integrated

1 into the equipment (at a standard rating
2 of 95 degrees F db).

3 “(C) The minimum coefficient of perform-
4 ance in the heating mode of air-cooled central
5 air conditioning heat pumps at or above
6 135,000 Btu per hour (cooling capacity) and
7 less than 240,000 Btu per hour (cooling capac-
8 ity) shall be 3.2 (at a high temperature rating
9 of 47 degrees F db).

10 “(9) Each very large commercial package air
11 conditioning and heating equipment manufactured
12 on or after January 1, 2010, shall meet the fol-
13 lowing standards:

14 “(A) The minimum energy efficiency ratio
15 of air-cooled central air conditioners at or above
16 240,000 btu per hour (cooling capacity) and
17 less than 760,000 Btu per hour (cooling capac-
18 ity) shall be—

19 “(i) 10.0 for equipment with no heat-
20 ing or electric resistance heating; and

21 “(ii) 9.8 for equipment with all other
22 heating system types that are integrated
23 into the equipment (at a standard rating
24 of 95 degrees F db).

1 “(B) The minimum energy efficiency ratio
2 of air-cooled central air conditioner heat pumps
3 at or above 240,000 Btu per hour (cooling ca-
4 pacity) and less than 760,000 Btu per hour
5 (cooling capacity) shall be—

6 “(i) 9.5 for equipment with no heating
7 or electric resistance heating; and

8 “(ii) 9.3 for equipment with all other
9 heating system types that are integrated
10 into the equipment (at a standard rating
11 of 95 degrees F db).

12 “(C) The minimum coefficient of perform-
13 ance in the heating mode of air-cooled central
14 air conditioning heat pumps at or above
15 240,000 Btu per hour (cooling capacity) and
16 less than 760,000 Btu per hour (cooling capac-
17 ity) shall be 3.2 (at a high temperature rating
18 of 47 degrees F db).

19 “(10) Notwithstanding paragraph (4) and ex-
20 cept as provided in paragraph (14), the minimum
21 thermal efficiency at the maximum rated capacity of
22 a gas-fired warm-air furnace with the capacity of
23 225,000 Btu per hour or more manufactured 4 or
24 more years after the date of enactment of this para-
25 graph shall be 79.5 percent.

1 “(11) Notwithstanding paragraph (4) and ex-
2 cept as provided in paragraph (14), the minimum
3 combustion efficiency at the maximum rated capac-
4 ity of a gas-fired package boiler with the capacity of
5 300,000 Btu per hour or more manufactured 4 or
6 more years after the date of enactment of this para-
7 graph shall be 84 percent.

8 “(12) Notwithstanding paragraph (5) (exclud-
9 ing paragraph (5)(g)), and except as provided in
10 paragraph (14)—

11 “(A) the maximum standby loss (expressed
12 as a percent per hour) of a gas-fired storage
13 water heater shall be 1.30 (expressed as a
14 measurement of storage volume in gallons); and

15 “(B) the minimal thermal efficiency of a
16 gas-fired storage water heater shall be 82 per-
17 cent.

18 “(13) Except as provided in paragraph (14),
19 each gas unit heater and gas duct furnace manufac-
20 tured 3 or more years after the date of enactment
21 of this paragraph shall be equipped with—

22 “(A) an intermittent ignition device; and

23 “(B)(i) power venting; or

24 “(ii) an automatic flue damper.

1 “(14)(A) Not later than 5 years after the date
2 on which a standard for a product under paragraph
3 (10), (11), (12), or (13) takes effect, the Secretary
4 shall promulgate a final rule to determine whether
5 the standard for that product should be amended.

6 “(B) If the Secretary determines that a
7 standard should be amended under subpara-
8 graph (A)—

9 “(i) the final rule promulgated pursu-
10 ant to subparagraph (A) shall contain the
11 new standard; and

12 “(ii) the new standard shall apply to
13 any product manufactured 4 or more years
14 after the date on which the final rule is
15 promulgated.”.

16 (c) TEST PROCEDURES.—Section 343 of the Energy
17 Policy and Conservation Act (42 U.S.C. 6314) is amended
18 in subsections (a)(4) and (d)(1), by inserting “very large
19 commercial package air conditioning and heating equip-
20 ment,” after “large commercial package air conditioning
21 and heating equipment,” each place it appears.

22 (d) LABELING.—Section 344(e) of the Energy Policy
23 and Conservation Act (42 U.S.C. 6315(e)) is amended in
24 the first and second sentences, by inserting “very large
25 commercial package air conditioning and heating equip-

1 ment,” after “large commercial package air conditioning
2 and heating equipment,” each place it appears.

3 (e) ADMINISTRATION, PENALTIES, ENFORCEMENT,
4 AND PREEMPTION.—Section 345 of the Energy Policy and
5 Conservation Act (42 U.S.C. 6316) is amended by adding
6 at the end the following:

7 “(d)(1) Except as provided in paragraphs (2) and
8 (3), section 327 shall apply with respect to the equipment
9 specified in section 340(1)(D) to the same extent and in
10 the same manner as section 327 applies under part A on
11 the date of enactment of this subsection.

12 “(2) Any State or local standard prescribed or en-
13 acted prior to the date of enactment of this subsection
14 shall not be preempted until the standards established
15 under section 342(a)(9) take effect on January 1, 2010.

16 “(3) If the California Energy Commission adopts, not
17 later than March 31, 2005, a regulation concerning the
18 energy efficiency or energy effective after, the standards
19 established under section 342(a)(9) take effect on January
20 1, 2010.”.

In section 304, insert at the end the following: “In
determining whether to defer such acquisition, the Sec-
retary shall use market-based practices when deciding to
acquire petroleum for the Strategic Petroleum Reserve,
as used prior to 2002; carry out and make public anal-

yses of costs and savings when making or deferring such acquisitions; take into account and report to Congress the impact the acquisition will have on the domestic and foreign supply of petroleum and the resulting price increases or decreases; and consult with the Secretary of Homeland Security on the security consequences of such acquisition or deferral.”.

In title III, subtitle A, add at the end the following new section:

1 SEC. 305. SENSE OF THE HOUSE OF REPRESENTATIVES.

2 It is the sense of the House of Representatives that,
3 to address the crude oil price problem in the short-term,
4 the President should communicate immediately to the
5 members of the Organization of Petroleum Exporting
6 Countries (OPEC) cartel and non-OPEC countries that
7 participate in the cartel of crude oil producing countries
8 that—

9 (1) the United States seeks to maintain strong
10 relations with crude oil producers around the world
11 while promoting international efforts to remove bar-
12 riers to energy trade and investment and increased
13 access for United States energy firms around the
14 world;

15 (2) the United States believes that restricting
16 supply in a market that is in demand for additional

1 crude oil does serious damage to the efforts that
2 OPEC members have made to demonstrate that they
3 represent a reliable source of crude oil supply;

4 (3) the United States believes that stable crude
5 oil prices and supplies are essential for strong eco-
6 nomic growth throughout the world;

7 (4) the United States seeks an immediate in-
8 crease in the OPEC crude oil production quotas; and

9 (5) the United States will temporarily suspend
10 further purchases of crude oil for the Strategic Pe-
11 troleum Reserve, thereby freeing up additional sup-
12 ply for the marketplace.

Amend section 355 to read as follows (and amend
the table of contents accordingly):

13 **SEC. 355. GREAT LAKES OIL AND GAS DRILLING BAN.**

14 No Federal or State permit or lease shall be issued
15 for new oil and gas slant, directional, or offshore drilling
16 in or under one or more of the Great Lakes.

Title XII is amended by striking sections 1201
through 1235 and sections 1237 through 1298, by strik-
ing the title heading, by inserting the following before
title XIII, by redesignating section 1236 (relating to na-
tive load service obligation) as section 1233 of the fol-
lowing and inserting such redesignated section 1233 after

section 1232 of the following, and by making the necessary conforming changes in the table of contents:

1 **TITLE XII—ELECTRICITY**

2 **SEC. 1201. SHORT TITLE.**

3 This title may be cited as the “Electric Reliability
4 Act of 2005”.

5 **Subtitle A—Reliability Standards**

6 **SEC. 1211. ELECTRIC RELIABILITY STANDARDS.**

7 (a) IN GENERAL.—Part II of the Federal Power Act
8 (16 U.S.C 824 et seq.) is amended by adding at the end
9 the following:

10 **“SEC. 215. ELECTRIC RELIABILITY.**

11 “(a) DEFINITIONS.—For purposes of this section:

12 “(1) The term ‘bulk-power system’ means—

13 “(A) facilities and control systems nec-
14 essary for operating an interconnected electric
15 energy transmission network (or any portion
16 thereof); and

17 “(B) electric energy from generation facili-
18 ties needed to maintain transmission system re-
19 liability.

20 The term does not include facilities used in the local
21 distribution of electric energy.

22 “(2) The terms ‘Electric Reliability Organiza-
23 tion’ and ‘ERO’ mean the organization certified by

1 the Commission under subsection (c) the purpose of
2 which is to establish and enforce reliability stand-
3 ards for the bulk-power system, subject to Commis-
4 sion review.

5 “(3) The term ‘reliability standard’ means a re-
6 quirement, approved by the Commission under this
7 section, to provide for reliable operation of the bulk-
8 power system. The term includes requirements for
9 the operation of existing bulk-power system facilities
10 and the design of planned additions or modifications
11 to such facilities to the extent necessary to provide
12 for reliable operation of the bulk-power system, but
13 the term does not include any requirement to en-
14 large such facilities or to construct new transmission
15 capacity or generation capacity.

16 “(4) The term ‘reliable operation’ means oper-
17 ating the elements of the bulk-power system within
18 equipment and electric system thermal, voltage, and
19 stability limits so that instability, uncontrolled sepa-
20 ration, or cascading failures of such system will not
21 occur as a result of a sudden disturbance or unan-
22 ticipated failure of system elements.

23 “(5) The term ‘Interconnection’ means a geo-
24 graphic area in which the operation of bulk-power
25 system components is synchronized such that the

1 failure of 1 or more of such components may ad-
2 versely affect the ability of the operators of other
3 components within the system to maintain reliable
4 operation of the facilities within their control.

5 “(6) The term ‘transmission organization’
6 means a Regional Transmission Organization, Inde-
7 pendent System Operator, independent transmission
8 provider, or other transmission organization finally
9 approved by the Commission for the operation of
10 transmission facilities.

11 “(7) The term ‘regional entity’ means an entity
12 having enforcement authority pursuant to subsection
13 (e)(4).

14 “(b) JURISDICTION AND APPLICABILITY.—(1) The
15 Commission shall have jurisdiction, within the United
16 States, over the ERO certified by the Commission under
17 subsection (c), any regional entities, and all users, owners
18 and operators of the bulk-power system, including but not
19 limited to the entities described in section 201(f), for pur-
20 poses of approving reliability standards established under
21 this section and enforcing compliance with this section. All
22 users, owners and operators of the bulk-power system
23 shall comply with reliability standards that take effect
24 under this section.

1 “(2) The Commission shall issue a final rule to imple-
2 ment the requirements of this section not later than 180
3 days after the date of enactment of this section.

4 “(c) CERTIFICATION.—Following the issuance of a
5 Commission rule under subsection (b)(2), any person may
6 submit an application to the Commission for certification
7 as the Electric Reliability Organization. The Commission
8 may certify 1 such ERO if the Commission determines
9 that such ERO—

10 “(1) has the ability to develop and enforce, sub-
11 ject to subsection (e)(2), reliability standards that
12 provide for an adequate level of reliability of the
13 bulk-power system; and

14 “(2) has established rules that—

15 “(A) assure its independence of the users
16 and owners and operators of the bulk-power
17 system, while assuring fair stakeholder rep-
18 resentation in the selection of its directors and
19 balanced decisionmaking in any ERO com-
20 mittee or subordinate organizational structure;

21 “(B) allocate equitably reasonable dues,
22 fees, and other charges among end users for all
23 activities under this section;

24 “(C) provide fair and impartial procedures
25 for enforcement of reliability standards through

1 the imposition of penalties in accordance with
2 subsection (e) (including limitations on activi-
3 ties, functions, or operations, or other appro-
4 priate sanctions);

5 “(D) provide for reasonable notice and op-
6 portunity for public comment, due process,
7 openness, and balance of interests in developing
8 reliability standards and otherwise exercising its
9 duties; and

10 “(E) provide for taking, after certification,
11 appropriate steps to gain recognition in Canada
12 and Mexico.

13 The total amount of all dues, fees, and other charges
14 collected by the ERO in each of the fiscal years
15 2006 through 2015 and allocated under subpara-
16 graph (B) shall not exceed \$50,000,000.

17 “(d) RELIABILITY STANDARDS.—(1) The Electric
18 Reliability Organization shall file each reliability standard
19 or modification to a reliability standard that it proposes
20 to be made effective under this section with the Commis-
21 sion.

22 “(2) The Commission may approve, by rule or order,
23 a proposed reliability standard or modification to a reli-
24 ability standard if it determines that the standard is just,
25 reasonable, not unduly discriminatory or preferential, and

1 in the public interest. The Commission shall give due
2 weight to the technical expertise of the Electric Reliability
3 Organization with respect to the content of a proposed
4 standard or modification to a reliability standard and to
5 the technical expertise of a regional entity organized on
6 an Interconnection-wide basis with respect to a reliability
7 standard to be applicable within that Interconnection, but
8 shall not defer with respect to the effect of a standard
9 on competition. A proposed standard or modification shall
10 take effect upon approval by the Commission.

11 “(3) The Electric Reliability Organization shall
12 rebuttably presume that a proposal from a regional entity
13 organized on an Interconnection-wide basis for a reliability
14 standard or modification to a reliability standard to be ap-
15 plicable on an Interconnection-wide basis is just, reason-
16 able, and not unduly discriminatory or preferential, and
17 in the public interest.

18 “(4) The Commission shall remand to the Electric
19 Reliability Organization for further consideration a pro-
20 posed reliability standard or a modification to a reliability
21 standard that the Commission disapproves in whole or in
22 part.

23 “(5) The Commission, upon its own motion or upon
24 complaint, may order the Electric Reliability Organization
25 to submit to the Commission a proposed reliability stand-

1 ard or a modification to a reliability standard that ad-
2 dresses a specific matter if the Commission considers such
3 a new or modified reliability standard appropriate to carry
4 out this section.

5 “(6) The final rule adopted under subsection (b)(2)
6 shall include fair processes for the identification and time-
7 ly resolution of any conflict between a reliability standard
8 and any function, rule, order, tariff, rate schedule, or
9 agreement accepted, approved, or ordered by the Commis-
10 sion applicable to a transmission organization. Such trans-
11 mission organization shall continue to comply with such
12 function, rule, order, tariff, rate schedule or agreement ac-
13 cepted approved, or ordered by the Commission until—

14 “(A) the Commission finds a conflict exists be-
15 tween a reliability standard and any such provision;

16 “(B) the Commission orders a change to such
17 provision pursuant to section 206 of this part; and

18 “(C) the ordered change becomes effective
19 under this part.

20 If the Commission determines that a reliability standard
21 needs to be changed as a result of such a conflict, it shall
22 order the ERO to develop and file with the Commission
23 a modified reliability standard under paragraph (4) or (5)
24 of this subsection.

1 “(e) ENFORCEMENT.—(1) The ERO may impose,
2 subject to paragraph (2), a penalty on a user or owner
3 or operator of the bulk-power system for a violation of a
4 reliability standard approved by the Commission under
5 subsection (d) if the ERO, after notice and an opportunity
6 for a hearing—

7 “(A) finds that the user or owner or operator
8 has violated a reliability standard approved by the
9 Commission under subsection (d); and

10 “(B) files notice and the record of the pro-
11 ceeding with the Commission.

12 “(2) A penalty imposed under paragraph (1) may
13 take effect not earlier than the 31st day after the ERO
14 files with the Commission notice of the penalty and the
15 record of proceedings. Such penalty shall be subject to re-
16 view by the Commission, on its own motion or upon appli-
17 cation by the user, owner or operator that is the subject
18 of the penalty filed within 30 days after the date such
19 notice is filed with the Commission. Application to the
20 Commission for review, or the initiation of review by the
21 Commission on its own motion, shall not operate as a stay
22 of such penalty unless the Commission otherwise orders
23 upon its own motion or upon application by the user,
24 owner or operator that is the subject of such penalty. In
25 any proceeding to review a penalty imposed under para-

1 graph (1), the Commission, after notice and opportunity
2 for hearing (which hearing may consist solely of the record
3 before the ERO and opportunity for the presentation of
4 supporting reasons to affirm, modify, or set aside the pen-
5 alty), shall by order affirm, set aside, reinstate, or modify
6 the penalty, and, if appropriate, remand to the ERO for
7 further proceedings. The Commission shall implement ex-
8 pedited procedures for such hearings.

9 “(3) On its own motion or upon complaint, the Com-
10 mission may order compliance with a reliability standard
11 and may impose a penalty against a user or owner or oper-
12 ator of the bulk-power system if the Commission finds,
13 after notice and opportunity for a hearing, that the user
14 or owner or operator of the bulk-power system has en-
15 gaged or is about to engage in any acts or practices that
16 constitute or will constitute a violation of a reliability
17 standard.

18 “(4) The Commission shall issue regulations author-
19 izing the ERO to enter into an agreement to delegate au-
20 thority to a regional entity for the purpose of proposing
21 reliability standards to the ERO and enforcing reliability
22 standards under paragraph (1) if—

23 “(A) the regional entity is governed by—

24 “(i) an independent board;

25 “(ii) a balanced stakeholder board; or

1 “(iii) a combination independent and bal-
2 anced stakeholder board.

3 “(B) the regional entity otherwise satisfies the
4 provisions of subsection (c)(1) and (2); and

5 “(C) the agreement promotes effective and effi-
6 cient administration of bulk-power system reliability.

7 The Commission may modify such delegation. The ERO
8 and the Commission shall rebuttably presume that a pro-
9 posal for delegation to a regional entity organized on an
10 Interconnection-wide basis promotes effective and efficient
11 administration of bulk-power system reliability and should
12 be approved. Such regulation may provide that the Com-
13 mission may assign the ERO’s authority to enforce reli-
14 ability standards under paragraph (1) directly to a re-
15 gional entity consistent with the requirements of this para-
16 graph.

17 “(5) The Commission may take such action as is nec-
18 essary or appropriate against the ERO or a regional entity
19 to ensure compliance with a reliability standard or any
20 Commission order affecting the ERO or a regional entity.

21 “(6) Any penalty imposed under this section shall
22 bear a reasonable relation to the seriousness of the viola-
23 tion and shall take into consideration the efforts of such
24 user, owner, or operator to remedy the violation in a time-
25 ly manner.

1 “(f) CHANGES IN ELECTRIC RELIABILITY ORGANIZA-
2 TION RULES.—The Electric Reliability Organization shall
3 file with the Commission for approval any proposed rule
4 or proposed rule change, accompanied by an explanation
5 of its basis and purpose. The Commission, upon its own
6 motion or complaint, may propose a change to the rules
7 of the ERO. A proposed rule or proposed rule change shall
8 take effect upon a finding by the Commission, after notice
9 and opportunity for comment, that the change is just, rea-
10 sonable, not unduly discriminatory or preferential, is in
11 the public interest, and satisfies the requirements of sub-
12 section (c).

13 “(g) RELIABILITY REPORTS.—The ERO shall con-
14 duct periodic assessments of the reliability and adequacy
15 of the bulk-power system in North America.

16 “(h) COORDINATION WITH CANADA AND MEXICO.—
17 The President is urged to negotiate international agree-
18 ments with the governments of Canada and Mexico to pro-
19 vide for effective compliance with reliability standards and
20 the effectiveness of the ERO in the United States and
21 Canada or Mexico.

22 “(i) SAVINGS PROVISIONS.—(1) The ERO shall have
23 authority to develop and enforce compliance with reli-
24 ability standards for only the bulk-power system.

1 “(2) This section does not authorize the ERO or the
2 Commission to order the construction of additional gen-
3 eration or transmission capacity or to set and enforce com-
4 pliance with standards for adequacy or safety of electric
5 facilities or services.

6 “(3) Nothing in this section shall be construed to pre-
7 empt any authority of any State to take action to ensure
8 the safety, adequacy, and reliability of electric service
9 within that State, as long as such action is not incon-
10 sistent with any reliability standard, except that the State
11 of New York may establish rules that result in greater
12 reliability within that State, as long as such action does
13 not result in lesser reliability outside the State than that
14 provided by the reliability standards..

15 “(4) Within 90 days of the application of the Electric
16 Reliability Organization or other affected party, and after
17 notice and opportunity for comment, the Commission shall
18 issue a final order determining whether a State action is
19 inconsistent with a reliability standard, taking into consid-
20 eration any recommendation of the ERO.

21 “(5) The Commission, after consultation with the
22 ERO and the State taking action, may stay the effective-
23 ness of any State action, pending the Commission’s
24 issuance of a final order.

1 “(j) REGIONAL ADVISORY BODIES.—The Commis-
2 sion shall establish a regional advisory body on the petition
3 of at least $\frac{2}{3}$ of the States within a region that have more
4 than $\frac{1}{2}$ of their electric load served within the region. A
5 regional advisory body shall be composed of 1 member
6 from each participating State in the region, appointed by
7 the Governor of each State, and may include representa-
8 tives of agencies, States, and provinces outside the United
9 States. A regional advisory body may provide advice to the
10 Electric Reliability Organization, a regional entity, or the
11 Commission regarding the governance of an existing or
12 proposed regional entity within the same region, whether
13 a standard proposed to apply within the region is just,
14 reasonable, not unduly discriminatory or preferential, and
15 in the public interest, whether fees proposed to be assessed
16 within the region are just, reasonable, not unduly discrimi-
17 natory or preferential, and in the public interest and any
18 other responsibilities requested by the Commission. The
19 Commission may give deference to the advice of any such
20 regional advisory body if that body is organized on an
21 Interconnection-wide basis.

22 “(k) ALASKA AND HAWAII.—The provisions of this
23 section do not apply to Alaska or Hawaii.”.

24 “(b) STATUS OF ERO.—The Electric Reliability Orga-
25 nization certified by the Federal Energy Regulatory Com-

1 mission under section 215(c) of the Federal Power Act
2 and any regional entity delegated enforcement authority
3 pursuant to section 215(e)(4) of that Act are not depart-
4 ments, agencies, or instrumentalities of the United States
5 Government.

6 (c) LIMITATION ON ANNUAL APPROPRIATIONS.—
7 There is authorized to be appropriated not more than
8 \$50,000,000 per year for fiscal years 2006 through 2015
9 for all activities under the amendment made by subsection
10 (a).

11 Subtitle B—Transmission 12 Operation Improvements

13 SEC. 1231. OPEN NONDISCRIMINATORY ACCESS.

14 Part II of the Federal Power Act (16 U.S.C. 824 et
15 seq.) is amended by inserting after section 211 the fol-
16 lowing new section:

17 “SEC. 211A. OPEN ACCESS BY UNREGULATED TRANSMIT- 18 TING UTILITIES.

19 “(a) TRANSMISSION SERVICES.—Subject to section
20 212(h), the Commission may, by rule or order, require an
21 unregulated transmitting utility to provide transmission
22 services—

23 “(1) at rates that are comparable to those that
24 the unregulated transmitting utility charges itself;
25 and

1 “(2) on terms and conditions (not relating to
2 rates) that are comparable to those under which
3 such unregulated transmitting utility provides trans-
4 mission services to itself and that are not unduly
5 discriminatory or preferential.

6 “(b) EXEMPTION.—The Commission shall exempt
7 from any rule or order under this section any unregulated
8 transmitting utility that—

9 “(1) sells no more than 4,000,000 megawatt
10 hours of electricity per year; or

11 “(2) does not own or operate any transmission
12 facilities that are necessary for operating an inter-
13 connected transmission system (or any portion
14 thereof); or

15 “(3) meets other criteria the Commission deter-
16 mines to be in the public interest.

17 “(c) LOCAL DISTRIBUTION FACILITIES.—The re-
18 quirements of subsection (a) shall not apply to facilities
19 used in local distribution.

20 “(d) EXEMPTION TERMINATION.—Whenever the
21 Commission, after an evidentiary hearing held upon a
22 complaint and after giving consideration to reliability
23 standards established under section 215, finds on the
24 basis of a preponderance of the evidence that any exemp-
25 tion granted pursuant to subsection (b) unreasonably im-

1 pairs the continued reliability of an interconnected trans-
2 mission system, it shall revoke the exemption granted to
3 that transmitting utility.

4 “(e) APPLICATION TO UNREGULATED TRANSMIT-
5 TING UTILITIES.—The rate changing procedures applica-
6 ble to public utilities under subsections (c) and (d) of sec-
7 tion 205 are applicable to unregulated transmitting utili-
8 ties for purposes of this section.

9 “(f) REMAND.—In exercising its authority under
10 paragraph (1) of subsection (a), the Commission may re-
11 mand transmission rates to an unregulated transmitting
12 utility for review and revision where necessary to meet the
13 requirements of subsection (a).

14 “(g) OTHER REQUESTS.—The provision of trans-
15 mission services under subsection (a) does not preclude a
16 request for transmission services under section 211.

17 “(h) LIMITATION.—The Commission may not require
18 a State or municipality to take action under this section
19 that would violate a private activity bond rule for purposes
20 of section 141 of the Internal Revenue Code of 1986 (26
21 U.S.C. 141).

22 “(i) TRANSFER OF CONTROL OF TRANSMITTING FA-
23 CILITIES.—Nothing in this section authorizes the Commis-
24 sion to require an unregulated transmitting utility to
25 transfer control or operational control of its transmitting

1 facilities to an RTO or any other Commission-approved
2 independent transmission organization designated to pro-
3 vide nondiscriminatory transmission access.

4 “(j) DEFINITION.—For purposes of this section, the
5 term ‘unregulated transmitting utility’ means an entity
6 that—

7 “(1) owns or operates facilities used for the
8 transmission of electric energy in interstate com-
9 merce; and

10 “(2) is an entity described in section 201(f).”.

11 **SEC. 1232. FEDERAL UTILITY PARTICIPATION IN REGIONAL**
12 **TRANSMISSION ORGANIZATIONS.**

13 (a) DEFINITIONS.—For purposes of this section—

14 (1) APPROPRIATE FEDERAL REGULATORY AU-
15 THORITY.—The term “appropriate Federal regu-
16 latory authority” means—

17 (A) with respect to a Federal power mar-
18 keting agency (as defined in the Federal Power
19 Act), the Secretary of Energy, except that the
20 Secretary may designate the Administrator of a
21 Federal power marketing agency to act as the
22 appropriate Federal regulatory authority with
23 respect to the transmission system of that Fed-
24 eral power marketing agency; and

1 (B) with respect to the Tennessee Valley
2 Authority, the Board of Directors of the Ten-
3 nessee Valley Authority.

4 (2) FEDERAL UTILITY.—The term “Federal
5 utility” means a Federal power marketing agency or
6 the Tennessee Valley Authority.

7 (3) TRANSMISSION SYSTEM.—The term “trans-
8 mission system” means electric transmission facili-
9 ties owned, leased, or contracted for by the United
10 States and operated by a Federal utility.

11 (b) TRANSFER.—The appropriate Federal regulatory
12 authority is authorized to enter into a contract, agreement
13 or other arrangement transferring control and use of all
14 or part of the Federal utility’s transmission system to an
15 RTO or ISO (as defined in the Federal Power Act), ap-
16 proved by the Federal Energy Regulatory Commission.
17 Such contract, agreement or arrangement shall include—

18 (1) performance standards for operation and
19 use of the transmission system that the head of the
20 Federal utility determines necessary or appropriate,
21 including standards that assure recovery of all the
22 Federal utility’s costs and expenses related to the
23 transmission facilities that are the subject of the
24 contract, agreement or other arrangement; consist-
25 ency with existing contracts and third-party financ-

1 ing arrangements; and consistency with said Federal
2 utility's statutory authorities, obligations, and limi-
3 tations;

4 (2) provisions for monitoring and oversight by
5 the Federal utility of the RTO's or ISO's fulfillment
6 of the terms and conditions of the contract, agree-
7 ment or other arrangement, including a provision for
8 the resolution of disputes through arbitration or
9 other means with the regional transmission organi-
10 zation or with other participants, notwithstanding
11 the obligations and limitations of any other law re-
12 garding arbitration; and

13 (3) a provision that allows the Federal utility to
14 withdraw from the RTO or ISO and terminate the
15 contract, agreement or other arrangement in accord-
16 ance with its terms.

17 Neither this section, actions taken pursuant to it, nor any
18 other transaction of a Federal utility using an RTO or
19 ISO shall confer upon the Federal Energy Regulatory
20 Commission jurisdiction or authority over the Federal util-
21 ity's electric generation assets, electric capacity or energy
22 that the Federal utility is authorized by law to market,
23 or the Federal utility's power sales activities.

24 (c) EXISTING STATUTORY AND OTHER OBLIGA-
25 TIONS.—

1 (1) SYSTEM OPERATION REQUIREMENTS.—No
2 statutory provision requiring or authorizing a Fed-
3 eral utility to transmit electric power or to construct,
4 operate or maintain its transmission system shall be
5 construed to prohibit a transfer of control and use
6 of its transmission system pursuant to, and subject
7 to all requirements of subsection (b).

8 (2) OTHER OBLIGATIONS.—This subsection
9 shall not be construed to—

10 (A) suspend, or exempt any Federal utility
11 from, any provision of existing Federal law, in-
12 cluding but not limited to any requirement or
13 direction relating to the use of the Federal util-
14 ity's transmission system, environmental protec-
15 tion, fish and wildlife protection, flood control,
16 navigation, water delivery, or recreation; or

17 (B) authorize abrogation of any contract
18 or treaty obligation.

19 (3) REPEAL.—Section 311 of title III of Appen-
20 dix B of the Act of October 27, 2000 (P.L. 106-
21 377, section 1(a)(2); 114 Stat. 1441, 1441A-80; 16
22 U.S.C. 824n) is repealed.

1 **Subtitle C—Amendments to**
2 **PURPA**

3 **SEC. 1251. NET METERING AND ADDITIONAL STANDARDS.**

4 (a) **ADOPTION OF STANDARDS.**—Section 111(d) of
5 the Public Utility Regulatory Policies Act of 1978 (16
6 U.S.C. 2621(d)) is amended by adding at the end the fol-
7 lowing:

8 “(11) **NET METERING.**—Each electric utility
9 shall make available upon request net metering serv-
10 ice to any electric consumer that the electric utility
11 serves. For purposes of this paragraph, the term
12 ‘net metering service’ means service to an electric
13 consumer under which electric energy generated by
14 that electric consumer from an eligible on-site gener-
15 ating facility and delivered to the local distribution
16 facilities may be used to offset electric energy pro-
17 vided by the electric utility to the electric consumer
18 during the applicable billing period.

19 “(12) **FUEL SOURCES.**—Each electric utility
20 shall develop a plan to minimize dependence on 1
21 fuel source and to ensure that the electric energy it
22 sells to consumers is generated using a diverse range
23 of fuels and technologies, including renewable tech-
24 nologies.

1 “(13) FOSSIL FUEL GENERATION EFFI-
2 CIENCY.—Each electric utility shall develop and im-
3 plement a 10-year plan to increase the efficiency of
4 its fossil fuel generation.”.

5 (b) COMPLIANCE.—

6 (1) TIME LIMITATIONS.—Section 112(b) of the
7 Public Utility Regulatory Policies Act of 1978 (16
8 U.S.C. 2622(b)) is amended by adding at the end
9 the following:

10 “(3)(A) Not later than 2 years after the enactment
11 of this paragraph, each State regulatory authority (with
12 respect to each electric utility for which it has ratemaking
13 authority) and each nonregulated electric utility shall com-
14 mence the consideration referred to in section 111, or set
15 a hearing date for such consideration, with respect to each
16 standard established by paragraphs (11) through (13) of
17 section 111(d).

18 “(B) Not later than 3 years after the date of the en-
19 actment of this paragraph, each State regulatory authority
20 (with respect to each electric utility for which it has rate-
21 making authority), and each nonregulated electric utility,
22 shall complete the consideration, and shall make the deter-
23 mination, referred to in section 111 with respect to each
24 standard established by paragraphs (11) through (13) of
25 section 111(d).”.

1 (2) FAILURE TO COMPLY.—Section 112(c) of
2 the Public Utility Regulatory Policies Act of 1978
3 (16 U.S.C. 2622(c)) is amended by adding at the
4 end the following:

5 “In the case of each standard established by paragraphs
6 (11) through (13) of section 111(d), the reference con-
7 tained in this subsection to the date of enactment of this
8 Act shall be deemed to be a reference to the date of enact-
9 ment of such paragraphs (11) through (13).”

10 (3) PRIOR STATE ACTIONS.—

11 (A) IN GENERAL.—Section 112 of the
12 Public Utility Regulatory Policies Act of 1978
13 (16 U.S.C. 2622) is amended by adding at the
14 end the following:

15 “(d) PRIOR STATE ACTIONS.—Subsections (b) and
16 (c) of this section shall not apply to the standards estab-
17 lished by paragraphs (11) through (13) of section 111(d)
18 in the case of any electric utility in a State if, before the
19 enactment of this subsection—

20 “(1) the State has implemented for such utility
21 the standard concerned (or a comparable standard);

22 “(2) the State regulatory authority for such
23 State or relevant nonregulated electric utility has
24 conducted a proceeding to consider implementation

1 of the standard concerned (or a comparable stand-
2 ard) for such utility; or

3 “(3) the State legislature has voted on the im-
4 plementation of such standard (or a comparable
5 standard) for such utility.”.

6 (B) CROSS REFERENCE.—Section 124 of
7 such Act (16 U.S.C. 2634) is amended by add-
8 ing the following at the end thereof: “In the
9 case of each standard established by paragraphs
10 (11) through (13) of section 111(d), the ref-
11 erence contained in this subsection to the date
12 of enactment of this Act shall be deemed to be
13 a reference to the date of enactment of such
14 paragraphs (11) through (13).”.

15 **SEC. 1252. SMART METERING.**

16 (a) IN GENERAL.—Section 111(d) of the Public Utili-
17 ties Regulatory Policies Act of 1978 (16 U.S.C. 2621(d))
18 is amended by adding at the end the following:

19 “(14) TIME-BASED METERING AND COMMU-
20 NICATIONS.—

21 “(A) Not later than 18 months after the
22 date of enactment of this paragraph, each elec-
23 tric utility shall offer each of its customer class-
24 es, and provide individual customers upon cus-
25 tomer request, a time-based rate schedule under

1 which the rate charged by the electric utility
2 varies during different time periods and reflects
3 the variance, if any, in the utility's costs of gen-
4 erating and purchasing electricity at the whole-
5 sale level. The time-based rate schedule shall
6 enable the electric consumer to manage energy
7 use and cost through advanced metering and
8 communications technology.

9 “(B) The types of time-based rate sched-
10 ules that may be offered under the schedule re-
11 ferred to in subparagraph (A) include, among
12 others—

13 “(i) time-of-use pricing whereby elec-
14 tricity prices are set for a specific time pe-
15 riod on an advance or forward basis, typi-
16 cally not changing more often than twice a
17 year, based on the utility's cost of gener-
18 ating and/or purchasing such electricity at
19 the wholesale level for the benefit of the
20 consumer. Prices paid for energy consumed
21 during these periods shall be pre-estab-
22 lished and known to consumers in advance
23 of such consumption, allowing them to
24 vary their demand and usage in response
25 to such prices and manage their energy

1 costs by shifting usage to a lower cost pe-
2 riod or reducing their consumption overall;

3 “(ii) critical peak pricing whereby
4 time-of-use prices are in effect except for
5 certain peak days, when prices may reflect
6 the costs of generating and/or purchasing
7 electricity at the wholesale level and when
8 consumers may receive additional discounts
9 for reducing peak period energy consump-
10 tion; and

11 “(iii) real-time pricing whereby elec-
12 tricity prices are set for a specific time pe-
13 riod on an advanced or forward basis, re-
14 flecting the utility’s cost of generating and/
15 or purchasing electricity at the wholesale
16 level, and may change as often as hourly.

17 “(C) Each electric utility subject to sub-
18 paragraph (A) shall provide each customer re-
19 questing a time-based rate with a time-based
20 meter capable of enabling the utility and cus-
21 tomer to offer and receive such rate, respec-
22 tively.

23 “(D) For purposes of implementing this
24 paragraph, any reference contained in this sec-
25 tion to the date of enactment of the Public Util-

1 ity Regulatory Policies Act of 1978 shall be
2 deemed to be a reference to the date of enact-
3 ment of this paragraph.

4 “(E) In a State that permits third-party
5 marketers to sell electric energy to retail elec-
6 tric consumers, such consumers shall be entitled
7 to receive the same time-based metering and
8 communications device and service as a retail
9 electric consumer of the electric utility.

10 “(F) Notwithstanding subsections (b) and
11 (c) of section 112, each State regulatory au-
12 thority shall, not later than 18 months after the
13 date of enactment of this paragraph conduct an
14 investigation in accordance with section 115(i)
15 and issue a decision whether it is appropriate to
16 implement the standards set out in subpara-
17 graphs (A) and (C).”.

18 (b) STATE INVESTIGATION OF DEMAND RESPONSE
19 AND TIME-BASED METERING.—Section 115 of the Public
20 Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2625)
21 is amended as follows:

22 (1) By inserting in subsection (b) after the
23 phrase “the standard for time-of-day rates estab-
24 lished by section 111(d)(3)” the following: “and the

1 standard for time-based metering and communica-
2 tions established by section 111(d)(14)”.

3 (2) By inserting in subsection (b) after the
4 phrase “are likely to exceed the metering” the fol-
5 lowing: “and communications”.

6 (3) By adding the at the end the following:

7 “(i) TIME-BASED METERING AND COMMUNICA-
8 TIONS.—In making a determination with respect to the
9 standard established by section 111(d)(14), the investiga-
10 tion requirement of section 111(d)(14)(F) shall be as fol-
11 lows: Each State regulatory authority shall conduct an in-
12 vestigation and issue a decision whether or not it is appro-
13 priate for electric utilities to provide and install time-based
14 meters and communications devices for each of their cus-
15 tomers which enable such customers to participate in time-
16 based pricing rate schedules and other demand response
17 programs.”.

18 (c) FEDERAL ASSISTANCE ON DEMAND RE-
19 SPONSE.—Section 132(a) of the Public Utility Regulatory
20 Policies Act of 1978 (16 U.S.C. 2642(a)) is amended by
21 striking “and” at the end of paragraph (3), striking the
22 period at the end of paragraph (4) and inserting “; and”,
23 and by adding the following at the end thereof:

24 “(5) technologies, techniques, and rate-making
25 methods related to advanced metering and commu-

1 nications and the use of these technologies, tech-
2 niques and methods in demand response programs.”.

3 (d) FEDERAL GUIDANCE.—Section 132 of the Public
4 Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642)
5 is amended by adding the following at the end thereof:

6 “(d) DEMAND RESPONSE.—The Secretary shall be
7 responsible for—

8 “(1) educating consumers on the availability,
9 advantages, and benefits of advanced metering and
10 communications technologies, including the funding
11 of demonstration or pilot projects;

12 “(2) working with States, utilities, other energy
13 providers and advanced metering and communica-
14 tions experts to identify and address barriers to the
15 adoption of demand response programs; and

16 “(3) not later than 180 days after the date of
17 enactment of the Energy Policy Act of 2005, pro-
18 viding Congress with a report that identifies and
19 quantifies the national benefits of demand response
20 and makes a recommendation on achieving specific
21 levels of such benefits by January 1, 2007.”.

22 (e) DEMAND RESPONSE AND REGIONAL COORDINA-
23 TION.—

24 (1) IN GENERAL.—It is the policy of the United
25 States to encourage States to coordinate, on a re-

1 gional basis, State energy policies to provide reliable
2 and affordable demand response services to the pub-
3 lic.

4 (2) TECHNICAL ASSISTANCE.—The Secretary of
5 Energy shall provide technical assistance to States
6 and regional organizations formed by 2 or more
7 States to assist them in—

8 (A) identifying the areas with the greatest
9 demand response potential;

10 (B) identifying and resolving problems in
11 transmission and distribution networks, includ-
12 ing through the use of demand response;

13 (C) developing plans and programs to use
14 demand response to respond to peak demand or
15 emergency needs; and

16 (D) identifying specific measures con-
17 sumers can take to participate in these demand
18 response programs.

19 (3) REPORT.—Not later than 1 year after the
20 date of enactment of the Energy Policy Act of 2005,
21 the Commission shall prepare and publish an annual
22 report, by appropriate region, that assesses demand
23 response resources, including those available from all
24 consumer classes, and which identifies and reviews—

1 (A) saturation and penetration rate of ad-
2 vanced meters and communications tech-
3 nologies, devices and systems;

4 (B) existing demand response programs
5 and time-based rate programs;

6 (C) the annual resource contribution of de-
7 mand resources;

8 (D) the potential for demand response as
9 a quantifiable, reliable resource for regional
10 planning purposes; and

11 (E) steps taken to ensure that, in regional
12 transmission planning and operations, demand
13 resources are provided equitable treatment as a
14 quantifiable, reliable resource relative to the re-
15 source obligations of any load-serving entity,
16 transmission provider, or transmitting party.

17 (f) FEDERAL ENCOURAGEMENT OF DEMAND RE-
18 SPONSE DEVICES.—It is the policy of the United States
19 that time-based pricing and other forms of demand re-
20 sponse, whereby electricity customers are provided with
21 electricity price signals and the ability to benefit by re-
22 sponding to them, shall be encouraged, and the deploy-
23 ment of such technology and devices that enable electricity
24 customers to participate in such pricing and demand re-
25 sponse systems shall be facilitated. It is further the policy

1 of the United States that the benefits of such demand re-
2 sponse that accrue to those not deploying such technology
3 and devices, but who are part of the same regional elec-
4 tricity entity, shall be recognized.

5 (g) TIME LIMITATIONS.—Section 112(b) of the Pub-
6 lic Utility Regulatory Policies Act of 1978 (16 U.S.C.
7 2622(b)) is amended by adding at the end the following:

8 “(4)(A) Not later than 1 year after the enact-
9 ment of this paragraph, each State regulatory au-
10 thority (with respect to each electric utility for which
11 it has ratemaking authority) and each nonregulated
12 electric utility shall commence the consideration re-
13 ferred to in section 111, or set a hearing date for
14 such consideration, with respect to the standard es-
15 tablished by paragraph (14) of section 111(d).

16 “(B) Not later than 2 years after the date of
17 the enactment of this paragraph, each State regu-
18 latory authority (with respect to each electric utility
19 for which it has ratemaking authority), and each
20 nonregulated electric utility, shall complete the con-
21 sideration, and shall make the determination, re-
22 ferred to in section 111 with respect to the standard
23 established by paragraph (14) of section 111(d).”

1 (h) FAILURE TO COMPLY.—Section 112(c) of the
2 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.
3 2622(c)) is amended by adding at the end the following:
4 “In the case of the standard established by paragraph (14)
5 of section 111(d), the reference contained in this sub-
6 section to the date of enactment of this Act shall be
7 deemed to be a reference to the date of enactment of such
8 paragraph (14).”.

9 (i) PRIOR STATE ACTIONS REGARDING SMART ME-
10 TERING STANDARDS.—

11 (1) IN GENERAL.—Section 112 of the Public
12 Utility Regulatory Policies Act of 1978 (16 U.S.C.
13 2622) is amended by adding at the end the fol-
14 lowing:

15 “(e) PRIOR STATE ACTIONS.—Subsections (b) and
16 (c) of this section shall not apply to the standard estab-
17 lished by paragraph (14) of section 111(d) in the case of
18 any electric utility in a State if, before the enactment of
19 this subsection—

20 “(1) the State has implemented for such utility
21 the standard concerned (or a comparable standard);

22 “(2) the State regulatory authority for such
23 State or relevant nonregulated electric utility has
24 conducted a proceeding to consider implementation

1 of the standard concerned (or a comparable stand-
2 ard) for such utility within the previous 3 years; or

3 “(3) the State legislature has voted on the im-
4 plementation of such standard (or a comparable
5 standard) for such utility within the previous 3
6 years.”.

7 (2) CROSS REFERENCE.—Section 124 of such
8 Act (16 U.S.C. 2634) is amended by adding the fol-
9 lowing at the end thereof: “In the case of the stand-
10 ard established by paragraph (14) of section 111(d),
11 the reference contained in this subsection to the date
12 of enactment of this Act shall be deemed to be a ref-
13 erence to the date of enactment of such paragraph
14 (14).”.

15 **Subtitle D—Market Transparency,**
16 **Enforcement, and Consumer**
17 **Protection**

18 **SEC. 1282. MARKET MANIPULATION.**

19 Part II of the Federal Power Act (16 U.S.C. 824 et
20 seq.) is amended by adding at the end the following:

21 **“SEC. 221. PROHIBITION ON FILING FALSE INFORMATION.**

22 “No person or other entity (including an entity de-
23 scribed in section 201(f)) shall willfully and knowingly re-
24 port any information relating to the price of electricity
25 sold at wholesale or availability of transmission capacity,

1 which information the person or any other entity knew to
2 be false at the time of the reporting, to a Federal agency
3 with intent to fraudulently affect the data being compiled
4 by such Federal agency.

5 **"SEC. 222. PROHIBITION ON ROUND TRIP TRADING.**

6 “(a) PROHIBITION.—No person or other entity (in-
7 cluding an entity described in section 201(f)) shall willfully
8 and knowingly enter into any contract or other arrange-
9 ment to execute a ‘round trip trade’ for the purchase or
10 sale of electric energy at wholesale.

11 “(b) DEFINITION.—For the purposes of this section,
12 the term ‘round trip trade’ means a transaction, or com-
13 bination of transactions, in which a person or any other
14 entity—

15 “(1) enters into a contract or other arrange-
16 ment to purchase from, or sell to, any other person
17 or other entity electric energy at wholesale;

18 “(2) simultaneously with entering into the con-
19 tract or arrangement described in paragraph (1), ar-
20 ranges a financially offsetting trade with such other
21 person or entity for the same such electric energy,
22 at the same location, price, quantity and terms so
23 that, collectively, the purchase and sale transactions
24 in themselves result in no financial gain or loss; and

1 “(3) enters into the contract or arrangement
2 with a specific intent to fraudulently affect reported
3 revenues, trading volumes, or prices.”.

4 **SEC. 1283. FRAUDULENT OR MANIPULATIVE PRACTICES.**

5 (a) **UNLAWFUL ACTS.**—It shall be unlawful for any
6 entity, directly or indirectly, by the use of any means or
7 instrumentality of interstate commerce or of the mails to
8 use or employ, in the transmission of electric energy in
9 interstate commerce, the sale of electric energy at whole-
10 sale in interstate commerce, the transportation of natural
11 gas in interstate commerce, or the sale in interstate com-
12 merce of natural gas for resale for ultimate public con-
13 sumption for domestic, commercial, industrial, or any
14 other use, any fraudulent, manipulative, or deceptive de-
15 vice or contrivance in contravention of such rules and reg-
16 ulations as the Federal Energy Regulatory Commission
17 may prescribe as necessary or appropriate in the public
18 interest.

19 (b) **APPLICATION OF FEDERAL POWER ACT TO THIS**
20 **ACT.**—The provisions of section 307 through 309 and 313
21 through 317 of the Federal Power Act shall apply to viola-
22 tions of the Electric Reliability Act of 2005 in the same
23 manner and to the same extent as such provisions apply
24 to entities subject to Part II of the Federal Power Act.

1 SEC. 1284. RULEMAKING ON EXEMPTIONS, WAIVERS, ETC
2 UNDER FEDERAL POWER ACT.

3 Part III of the Federal Power Act is amended by in-
4 serting the following new section after section 319 and by
5 redesignating sections 320 and 321 as sections 321 and
6 322, respectively:

7 "SEC. 320. CRITERIA FOR CERTAIN EXEMPTIONS, WAIVERS,
8 ETC.

9 "(a) RULE REQUIRED FOR CERTAIN WAIVERS, EX-
10 EMPTIONS, ETC.—Not later than 6 months after the en-
11 actment of this Act, the Commission shall promulgate a
12 rule establishing specific criteria for providing an exemp-
13 tion, waiver, or other reduced or abbreviated form of com-
14 pliance with the requirements of sections 204, 301, 304,
15 and 305 (including any prospective blanket order). Such
16 criteria shall be sufficient to insure that any such action
17 taken by the Commission will be consistent with the pur-
18 poses of such requirements and will otherwise protect the
19 public interest.

20 "(b) MORATORIUM ON CERTAIN WAIVERS, EXEMP-
21 TIONS, ETC.—After the date of enactment of this section,
22 the Commission may not issue, adopt, order, approve, or
23 promulgate any exemption, waiver, or other reduced or ab-
24 breviated form of compliance with the requirements of sec-
25 tion 204, 301, 304, or 305 (including any prospective

1 blanket order) until after the rule promulgated under sub-
2 section (a) has taken effect.

3 “(c) PREVIOUS FERC ACTION.—The Commission
4 shall undertake a review, by rule or order, of each exemp-
5 tion, waiver, or other reduced or abbreviated form of com-
6 pliance described in subsection (a) that was taken before
7 the date of enactment of this section. No such action may
8 continue in force and effect after the date 18 months after
9 the date of enactment of this section unless the Commis-
10 sion finds that such action complies with the rule under
11 subsection (a).

12 “(d) EXEMPTION UNDER 204(F) NOT APPLICA-
13 BLE.—For purposes of this section, in applying section
14 204, the provisions of section 204(f) shall not apply.”.

15 **SEC. 1285. REPORTING REQUIREMENTS IN ELECTRIC**
16 **POWER SALES AND TRANSMISSION.**

17 “(a) AUDIT TRAILS.—Section 304 of the Federal
18 Power Act is amended by adding the following new sub-
19 section at the end thereof:

20 “(c)(1) The Commission shall, by rule or order, re-
21 quire each person or other entity engaged in the trans-
22 mission of electric energy in interstate commerce or the
23 sale of electric energy at wholesale in interstate commerce,
24 and each broker, dealer, and power marketer involved in
25 any such transmission or sale, to maintain, and periodi-

1 cally submit to the Commission, such records, in electronic
2 form, of each transaction relating to such transmission or
3 sale as may be necessary to determine whether any person
4 has employed any fraudulent, manipulative, or deceptive
5 device or contrivance in contravention of rules promul-
6 gated by the Commission.

7 “(2) Section 201(f) shall not limit the applica-
8 tion of this subsection.”.

9 (b) NATURAL GAS.—Section 8 of the Natural Gas
10 Act is amended by adding the following new subsection
11 at the end thereof:

12 “(d) The Commission shall, by rule or order, require
13 each person or other entity engaged in the transportation
14 of natural gas in interstate commerce, or the sale in inter-
15 state commerce of natural gas for resale for ultimate pub-
16 lic consumption for domestic, commercial, industrial, or
17 any other use, and each broker, dealer, and power mar-
18 keter involved in any such transportation or sale, to main-
19 tain, and periodically submit to the Commission, such
20 records, in electronic form, of each transaction relating to
21 such transmission or sale as may be necessary to deter-
22 mine whether any person has employed any fraudulent,
23 manipulative, or deceptive device or contrivance in con-
24 travention of rules promulgated by the Commission.”.

1 SEC. 1286. TRANSPARENCY.

2 (a) DEFINITION.—As used in this section the term
3 “electric power or natural gas information processor”
4 means any person engaged in the business of—

5 (1) collecting, processing, or preparing for dis-
6 tribution or publication, or assisting, participating
7 in, or coordinating the distribution or publication of,
8 information with respect to transactions in or
9 quotations involving the purchase or sale of electric
10 power, natural gas, the transmission of electric en-
11 ergy, or the transportation of natural gas, or

12 (2) distributing or publishing (whether by
13 means of a ticker tape, a communications network,
14 a terminal display device, or otherwise) on a current
15 and continuing basis, information with respect to
16 such transactions or quotations.

17 The term does not include any bona fide newspaper, news
18 magazine, or business or financial publication of general
19 and regular circulation, any self-regulatory organization,
20 any bank, broker, dealer, building and loan, savings and
21 loan, or homestead association, or cooperative bank, if
22 such bank, broker, dealer, association, or cooperative bank
23 would be deemed to be an electric power or natural gas
24 information processor solely by reason of functions per-
25 formed by such institutions as part of customary banking,
26 brokerage, dealing, association, or cooperative bank activi-

1 ties, or any common carrier, as defined in section 3 of
2 the Communications Act of 1934, subject to the jurisdic-
3 tion of the Federal Communications Commission or a
4 State commission, as defined in section 3 of that Act, un-
5 less the Commission determines that such carrier is en-
6 gaged in the business of collecting, processing, or pre-
7 paring for distribution or publication, information with re-
8 spect to transactions in or quotations involving the pur-
9 chase or sale of electric power, natural gas, the trans-
10 mission of electric energy, or the transportation of natural
11 gas.

12 (b) PROHIBITION.—No electric power or natural gas
13 information processor may make use of the mails or any
14 means or instrumentality of interstate commerce—

15 (1) to collect, process, distribute, publish, or
16 prepare for distribution or publication any informa-
17 tion with respect to quotations for, or transactions
18 involving the purchase or sale of electric power, nat-
19 ural gas, the transmission of electric energy, or the
20 transportation of natural gas, or

21 (2) to assist, participate in, or coordinate the
22 distribution or publication of such information in
23 contravention of such rules and regulations as the
24 Federal Energy Regulatory Commission shall pre-

1 scribe as necessary or appropriate in the public in-
2 terest to

3 (A) prevent the use, distribution, or publi-
4 cation of fraudulent, deceptive, or manipulative
5 information with respect to quotations for and
6 transactions involving the purchase or sale of
7 electric power, natural gas, the transmission of
8 electric energy, or the transportation of natural
9 gas;

10 (B) assure the prompt, accurate, reliable,
11 and fair collection, processing, distribution, and
12 publication of information with respect to
13 quotations for and transactions involving the
14 purchase or sale of electric power, natural gas,
15 the transmission of electric energy, or the
16 transportation of natural gas, and the fairness
17 and usefulness of the form and content of such
18 information;

19 (C) assure that all such information proc-
20 essors may, for purposes of distribution and
21 publication, obtain on fair and reasonable terms
22 such information with respect to quotations for
23 and transactions involving the purchase or sale
24 of electric power, natural gas, the transmission
25 of electric energy, or the transportation of nat-

1 ural gas as is collected, processed, or prepared
2 for distribution or publication by any exclusive
3 processor of such information acting in such ca-
4 pacity;

5 (D) assure that, subject to such limitations
6 as the Commission, by rule, may impose as nec-
7 essary or appropriate for the maintenance of
8 fair and orderly markets, all persons may ob-
9 tain on terms which are not unreasonably dis-
10 discriminatory such information with respect to
11 quotations for and transactions involving the
12 purchase or sale of electric power, natural gas,
13 the transmission of electric energy, or the
14 transportation of natural gas as is published or
15 distributed by any electric power or natural gas
16 information processor;

17 (E) assure that all electricity and natural
18 gas electronic communication networks transmit
19 and direct orders for the purchase and sale of
20 electricity or natural gas in a manner consistent
21 with the establishment and operation of an effi-
22 cient, fair, and orderly market system for elec-
23 tricity and natural gas; and

24 (F) assure equal regulation of all markets
25 involving the purchase or sale of electric power,

1 natural gas, the transmission of electric energy,
2 or the transportation of natural gas and all per-
3 sons effecting transactions involving the pur-
4 chase or sale of electric power, natural gas, the
5 transmission of electric energy, or the transpor-
6 tation of natural gas.

7 (c) RELATED COMMODITIES.—For purposes of this
8 section, the phrase “purchase or sale of electric power,
9 natural gas, the transmission of electric energy, or the
10 transportation of natural gas” includes the purchase or
11 sale of any commodity (as defined in the Commodities Ex-
12 change Act) relating to any such purchase or sale if such
13 commodity is excluded from regulation under the Com-
14 modities Exchange Act pursuant to section 2 of that Act.

15 (d) PROHIBITION.—No person who owns, controls, or
16 is under the control or ownership of a public utility, a nat-
17 ural gas company, or a public utility holding company may
18 own, control, or operate any electronic computer network
19 or other multilateral trading facility utilized to trade elec-
20 tricity or natural gas.

21 SEC. 1287. PENALTIES.

22 (a) CRIMINAL PENALTIES.—Section 316 of the Fed-
23 eral Power Act (16 U.S.C. 825o(c)) is amended as follows:

24 (1) By striking “\$5,000” in subsection (a) and
25 inserting “\$5,000,000 for an individual and

1 \$25,000,000 for any other defendant” and by strik-
2 ing out “two years” and inserting “five years” .

3 (2) By striking “\$500” in subsection (b) and
4 inserting “\$1,000,000”.

5 (3) By striking subsection (c).

6 (b) CIVIL PENALTIES.—Section 316A of the Federal
7 Power Act (16 U.S.C. 825o091) is amended as follows:

8 (1) By striking “section 211, 212, 213, or 214”
9 each place it appears and inserting “Part II”.

10 (2) By striking “\$10,000 for each day that
11 such violation continues” and inserting “the greater
12 of \$1,000,000 or three times the profit made or gain
13 or loss avoided by reason of such violation”.

14 (3) By adding the following at the end thereof:

15 “(c) AUTHORITY OF A COURT TO PROHIBIT PERSONS
16 FROM CERTAIN ACTIVITIES.—In any proceeding under
17 this section, the court may censure, place limitations on
18 the activities, functions, or operations of, suspend or re-
19 voke the ability of any entity (without regard to section
20 201(f)) to participate in the transmission of electric en-
21 ergy in interstate commerce or the sale of electric energy
22 at wholesale in interstate commerce if it finds that such
23 censure, placing of limitations, suspension, or revocation
24 is in the public interest and that one or more of the fol-
25 lowing applies to such entity:

1 “(1) Such entity has willfully made or caused to
2 be made in any application or report required to be
3 filed with the Commission or with any other appro-
4 priate regulatory agency, or in any proceeding before
5 the Commission, any statement which was at the
6 time and in the light of the circumstances under
7 which it was made false or misleading with respect
8 to any material fact, or has omitted to state in any
9 such application or report any material fact which is
10 required to be stated therein.

11 “(2) Such entity has been convicted of any fel-
12 ony or misdemeanor or of a substantially equivalent
13 crime by a foreign court of competent jurisdiction
14 which the court finds—

15 “(A) involves the purchase or sale of elec-
16 tricity, the taking of a false oath, the making
17 of a false report, bribery, perjury, burglary, any
18 substantially equivalent activity however de-
19 nominated by the laws of the relevant foreign
20 government, or conspiracy to commit any such
21 offense;

22 “(B) arises out of the conduct of the busi-
23 ness of transmitting electric energy in interstate
24 commerce or selling or purchasing electric en-
25 ergy at wholesale in interstate commerce;

1 “(C) involves the larceny, theft, robbery,
2 extortion, forgery, counterfeiting, fraudulent
3 concealment, embezzlement, fraudulent conver-
4 sion, or misappropriation of funds, or securities,
5 or substantially equivalent activity however de-
6 nominated by the laws of the relevant foreign
7 government; or

8 “(D) involves the violation of section 152,
9 1341, 1342, or 1343 or chapter 25 or 47 of
10 title 18, United States Code, or a violation of
11 a substantially equivalent foreign statute.

12 “(3) Such entity is permanently or temporarily
13 enjoined by order, judgment, or decree of any court
14 of competent jurisdiction from acting as an invest-
15 ment adviser, underwriter, broker, dealer, municipal
16 securities dealer, government securities broker, gov-
17 ernment securities dealer, transfer agent, foreign
18 person performing a function substantially equiva-
19 lent to any of the above, or entity or person required
20 to be registered under the Commodity Exchange Act
21 or any substantially equivalent foreign statute or
22 regulation, or as an affiliated person or employee of
23 any investment company, bank, insurance company,
24 foreign entity substantially equivalent to any of the
25 above, or entity or person required to be registered

1 under the Commodity Exchange Act or any substan-
2 tially equivalent foreign statute or regulation, or
3 from engaging in or continuing any conduct or prac-
4 tice in connection with any such activity, or in con-
5 nection with the purchase or sale of any security.

6 “(4) Such entity has willfully violated any pro-
7 vision of this Act.

8 “(5) Such entity has willfully aided, abetted,
9 counseled, commanded, induced, or procured the vio-
10 lation by any other person of any provision of this
11 Act, or has failed reasonably to supervise, with a
12 view to preventing violations of the provisions of this
13 Act, another person who commits such a violation,
14 if such other person is subject to his supervision.
15 For the purposes of this paragraph no person shall
16 be deemed to have failed reasonably to supervise any
17 other person, if—

18 “(A) there have been established proce-
19 dures, and a system for applying such proce-
20 dures, which would reasonably be expected to
21 prevent and detect, insofar as practicable, any
22 such violation by such other person, and

23 “(B) such person has reasonably dis-
24 charged the duties and obligations incumbent
25 upon him by reason of such procedures and sys-

1 tem without reasonable cause to believe that
2 such procedures and system were not being
3 complied with.

4 “(6) Such entity has been found by a foreign fi-
5 nancial or energy regulatory authority to have—

6 “(A) made or caused to be made in any
7 application or report required to be filed with a
8 foreign regulatory authority, or in any pro-
9 ceeding before a foreign financial or energy reg-
10 ulatory authority, any statement that was at
11 the time and in the light of the circumstances
12 under which it was made false or misleading
13 with respect to any material fact, or has omit-
14 ted to state in any application or report to the
15 foreign regulatory authority any material fact
16 that is required to be stated therein;

17 “(B) violated any foreign statute or regula-
18 tion regarding the transmission or sale of elec-
19 tricity or natural gas;

20 “(C) aided, abetted, counseled, com-
21 manded, induced, or procured the violation by
22 any person of any provision of any statutory
23 provisions enacted by a foreign government, or
24 rules or regulations thereunder, empowering a
25 foreign regulatory authority regarding trans-

1 actions in electricity or natural gas, or con-
2 tracts of sale of electricity or natural gas, trad-
3 ed on or subject to the rules of a contract mar-
4 ket or any board of trade, or has been found,
5 by a foreign regulatory authority, to have failed
6 reasonably to supervise, with a view to preventing
7 violations of such statutory provisions, rules, and
8 regulations, another person who commits such a vio-
9 lation, if such other person is subject to his super-
10 vision.

11 “(7) Such entity is subject to any final order of
12 a State commission (or any agency or officer per-
13 forming like functions), State authority that super-
14 vises or examines banks, savings associations, or
15 credit unions, State insurance commission (or any
16 agency or office performing like functions), an ap-
17 propriate Federal banking agency (as defined in sec-
18 tion 3 of the Federal Deposit Insurance Act (12
19 U.S.C. 1813(q))), or the National Credit Union Ad-
20 ministration, that—

21 “(A) bars such person from association
22 with an entity regulated by such commission,
23 authority, agency, or officer, or from engaging
24 in the business of securities, insurance, bank-

1 ing, savings association activities, or credit
2 union activities; or

3 “(B) constitutes a final order based on vio-
4 lations of any laws or regulations that prohibit
5 fraudulent, manipulative, or deceptive conduct.”

6 (4) Such entity is subject to statutory disquali-
7 fication within the meaning of section 3(a)(39) of
8 the Securities Exchange Act of 1934.”

9 (c) NATURAL GAS ACT PENALTIES.—Section 21 of
10 the Natural Gas Act is amended by adding the following
11 new subsection at the end thereof:

12 “(c) AUTHORITY OF A COURT TO PROHIBIT PERSONS
13 FROM CERTAIN ACTIVITIES.—In any proceeding under
14 this section, the court may censure, place limitations on
15 the activities, functions, or operations of, suspend or re-
16 voke the ability of any entity (without regard to section
17 201(f)) to participate in the transportation of natural gas
18 in interstate commerce, or the sale in interstate commerce
19 of natural gas for resale for ultimate public consumption
20 for domestic, commercial, industrial, or any other use if
21 it finds that such censure, placing of limitations, suspen-
22 sion, or revocation is in the public interest and that one
23 or more of the following applies to such entity:

24 “(1) Such entity has willfully made or caused to
25 be made in any application or report required to be

1 filed with the Commission or with any other appro-
2 priate regulatory agency, or in any proceeding before
3 the Commission, any statement which was at the
4 time and in the light of the circumstances under
5 which it was made false or misleading with respect
6 to any material fact, or has omitted to state in any
7 such application or report any material fact which is
8 required to be stated therein.

9 “(2) Such entity has been convicted of any fel-
10 ony or misdemeanor or of a substantially equivalent
11 crime by a foreign court of competent jurisdiction
12 which the court finds—

13 “(A) involves the purchase or sale of nat-
14 ural gas, the taking of a false oath, the making
15 of a false report, bribery, perjury, burglary, any
16 substantially equivalent activity however de-
17 nominated by the laws of the relevant foreign
18 government, or conspiracy to commit any such
19 offense;

20 “(B) arises out of the conduct of the busi-
21 ness of transmitting natural gas in interstate
22 commerce, or the selling in interstate commerce
23 of natural gas for resale for ultimate public
24 consumption for domestic, commercial, indus-
25 trial, or any other use;

1 “(C) involves the larceny, theft, robbery,
2 extortion, forgery, counterfeiting, fraudulent
3 concealment, embezzlement, fraudulent conver-
4 sion, or misappropriation of funds, or securities,
5 or substantially equivalent activity however de-
6 nominated by the laws of the relevant foreign
7 government; or

8 “(D) involves the violation of section 152,
9 1341, 1342, or 1343 or chapter 25 or 47 of
10 title 18, United States Code, or a violation of
11 a substantially equivalent foreign statute.

12 “(3) Such entity is permanently or temporarily
13 enjoined by order, judgment, or decree of any court
14 of competent jurisdiction from acting as an invest-
15 ment adviser, underwriter, broker, dealer, municipal
16 securities dealer, government securities broker, gov-
17 ernment securities dealer, transfer agent, foreign
18 person performing a function substantially equiva-
19 lent to any of the above, or entity or person required
20 to be registered under the Commodity Exchange Act
21 or any substantially equivalent foreign statute or
22 regulation, or as an affiliated person or employee of
23 any investment company, bank, insurance company,
24 foreign entity substantially equivalent to any of the
25 above, or entity or person required to be registered

1 under the Commodity Exchange Act or any substan-
2 tially equivalent foreign statute or regulation, or
3 from engaging in or continuing any conduct or prac-
4 tice in connection with any such activity, or in con-
5 nection with the purchase or sale of any security.

6 “(4) Such entity has willfully violated any pro-
7 vision of this Act.

8 “(5) Such entity has willfully aided, abetted,
9 counseled, commanded, induced, or procured the vio-
10 lation by any other person of any provision of this
11 Act, or has failed reasonably to supervise, with a
12 view to preventing violations of the provisions of this
13 Act, another person who commits such a violation,
14 if such other person is subject to his supervision.
15 For the purposes of this paragraph no person shall
16 be deemed to have failed reasonably to supervise any
17 other person, if—

18 “(A) there have been established proce-
19 dures, and a system for applying such proce-
20 dures, which would reasonably be expected to
21 prevent and detect, insofar as practicable, any
22 such violation by such other person, and

23 “(B) such person has reasonably dis-
24 charged the duties and obligations incumbent
25 upon him by reason of such procedures and sys-

1 tem without reasonable cause to believe that
2 such procedures and system were not being
3 complied with.

4 “(6) Such entity has been found by a foreign fi-
5 nancial or energy regulatory authority to have—

6 “(A) made or caused to be made in any
7 application or report required to be filed with a
8 foreign regulatory authority, or in any pro-
9 ceeding before a foreign financial or energy reg-
10 ulatory authority, any statement that was at
11 the time and in the light of the circumstances
12 under which it was made false or misleading
13 with respect to any material fact, or has omit-
14 ted to state in any application or report to the
15 foreign regulatory authority any material fact
16 that is required to be stated therein;

17 “(B) violated any foreign statute or regula-
18 tion regarding the transmission or sale of elec-
19 tricity or natural gas;

20 “(C) aided, abetted, counseled, com-
21 manded, induced, or procured the violation by
22 any person of any provision of any statutory
23 provisions enacted by a foreign government, or
24 rules or regulations thereunder, empowering a
25 foreign regulatory authority regarding trans-

1 actions in electricity or natural gas, or con-
2 tracts of sale of electricity or natural gas, trad-
3 ed on or subject to the rules of a contract mar-
4 ket or any board of trade, or has been found,
5 by a foreign regulatory authority, to have failed
6 reasonably to supervise, with a view to pre-
7 venting violations of such statutory provisions,
8 rules, and regulations, another person who com-
9 mits such a violation, if such other person is
10 subject to his supervision.

11 “(7) Such entity is subject to any final order of
12 a State commission (or any agency or officer per-
13 forming like functions), State authority that super-
14 vises or examines banks, savings associations, or
15 credit unions, State insurance commission (or any
16 agency or office performing like functions), an ap-
17 propriate Federal banking agency (as defined in sec-
18 tion 3 of the Federal Deposit Insurance Act (12
19 U.S.C. 1813(q))), or the National Credit Union Ad-
20 ministration, that—

21 “(A) bars such person from association
22 with an entity regulated by such commission,
23 authority, agency, or officer, or from engaging
24 in the business of securities, insurance, bank-

1 ing, savings association activities, or credit
2 union activities; or

3 “(B) constitutes a final order based on vio-
4 lations of any laws or regulations that prohibit
5 fraudulent, manipulative, or deceptive conduct.

6 “(8) Such entity is subject to statutory dis-
7 qualification within the meaning of section 3(a)(39)
8 of the Securities Exchange Act of 1934.”.

9 **SEC. 1288. REVIEW OF PUHCA EXEMPTIONS.**

10 Not later than 12 months after the enactment of this
11 Act the Securities and Exchange Commission shall review
12 each exemption granted to any person under section 3(a)
13 of the Public Utility Holding Company Act of 1935 and
14 shall review the action of persons operating pursuant to
15 a claim of exempt status under section 3 to determine if
16 such exemptions and claims are consistent with the re-
17 quirements of such section 3(a) and whether or not such
18 exemptions or claims of exemption should continue in
19 force and effect.

20 **SEC. 1289. REVIEW OF ACCOUNTING FOR CONTRACTS IN-**
21 **VOLVED IN ENERGY TRADING.**

22 Not later than 12 months after the enactment of this
23 Act, the Comptroller General of the United States shall
24 submit to the Congress a report of the results of its review
25 of accounting for contracts in energy trading and risk

1 management activities. The review and report shall in-
2 clude, among other issues, the use of mark-to-market ac-
3 counting and when gains and losses should be recognized,
4 with a view toward improving the transparency of energy
5 trading activities for the benefit of investors, consumers,
6 and the integrity of these markets.

7 **SEC. 1290. PROTECTION OF FERC REGULATED SUBSIDI-**
8 **ARIES.**

9 Section 205 of the Federal Power Act is amended by
10 adding after subsection (f) the following new subsection:

11 “(g) **RULES AND PROCEDURES TO PROTECT CON-**
12 **SUMERS OF PUBLIC UTILITIES.**—Not later than 9 months
13 after the date of enactment of this Act, the Commission
14 shall adopt rules and procedures for the protection of elec-
15 tric consumers from self-dealing, interaffiliate abuse, and
16 other harmful actions taken by persons owning or control-
17 ling public utilities. Such rules shall ensure that no asset
18 of a public utility company shall be used as collateral for
19 indebtedness incurred by the holding company of, and any
20 affiliate of, such public utility company, and no public util-
21 ity shall acquire or own any securities of the holding com-
22 pany or other affiliates of the holding company unless the
23 Commission has determined that such acquisition or own-
24 ership is consistent with the public interest and the protec-
25 tion of consumers of such public utility.”.

1 **SEC. 1291. REFUNDS UNDER THE FEDERAL POWER ACT.**

2 Section 206(b) of the Federal Power Act is amended
3 as follows:

4 (1) By amending the first sentence to read as
5 follows: "In any proceeding under this section, the
6 refund effective date shall be the date of the filing
7 of a complaint or the date of the Commission motion
8 initiating the proceeding, except that in the case of
9 a complaint with regard to market-based rates, the
10 Commission may establish an earlier refund effective
11 date."

12 (2) By striking the second and third sentences.

13 (3) By striking out "the refund effective date or
14 by" and ", whichever is earlier," in the fifth sen-
15 tence.

16 (4) In the seventh sentence by striking
17 "through a date fifteen months after such refund ef-
18 fective date" and insert "and prior to the conclusion
19 of the proceeding" and by striking the proviso.

20 **SEC. 1292. ACCOUNTS AND REPORTS.**

21 Section 318 of the Federal Power Act is amended by
22 adding the following at the end thereof: "This section shall
23 not apply to sections 301 and 304 of this Act."

24 **SEC. 1293. MARKET-BASED RATES.**

25 Section 205 of the Federal Power Act is amended by
26 adding the following new subsection at the end thereof:

1 “(g) For each public utility granted the authority by
2 the Commission to sell electric energy at market-based
3 rates, the Commission shall review the activities and char-
4 acteristics of such utility not less frequently than annually
5 to determine whether such rates are just and reasonable.
6 Each such utility shall notify the Commission promptly
7 of any change in the activities and characteristics relied
8 upon by the Commission in granting such public utility
9 the authority to sell electric energy at market-based rates.
10 If the Commission finds that:

11 “(1) a rate charged by a public utility author-
12 ized to sell electric energy at market-based rates is
13 unjust, unreasonable, unduly discriminatory or pref-
14 erential,

15 “(2) the public utility has intentionally engaged
16 in an activity that violates any other rule, tariff, or
17 order of the Commission, or

18 “(3) any violation of the Electric Reliability Act
19 of 2005,

20 the Commission shall issue an order immediately modi-
21 fying or revoking the authority of that public utility to
22 sell electric energy at market-based rates.”.

23 **SEC. 1294. ENFORCEMENT.**

24 (a) COMPLAINTS.—Section 306 of the Federal Power
25 Act (16 U.S.C. 825e) is amended as follows:

1 (1) By inserting "electric utility," after "Any
2 person,".

3 (2) By inserting ", transmitting utility," after
4 "licensee" each place it appears.

5 (b) REVIEW OF COMMISSION ORDERS.—Section
6 313(a) of the Federal Power Act (16 U.S.C. 8251) is
7 amended by inserting "electric utility," after "person," in
8 the first 2 places it appears and by striking "any person
9 unless such person" and inserting "any entity unless such
10 entity".

11 (c) INVESTIGATIONS.—Section 307(a) of the Federal
12 Power Act (16 U.S.C. 825f(a)) is amended as follows:

13 (1) By inserting ", electric utility, transmitting
14 utility, or other entity" after "person" each time it
15 appears.

16 (2) By striking the period at the end of the
17 first sentence and inserting the following: "or in ob-
18 taining information about the sale of electric energy
19 at wholesale in interstate commerce and the trans-
20 mission of electric energy in interstate commerce.".

21 **SEC. 1295. CONSUMER PRIVACY AND UNFAIR TRADE PRAC-**
22 **TICES.**

23 (a) PRIVACY.—The Federal Trade Commission may
24 issue rules protecting the privacy of electric consumers
25 from the disclosure of consumer information obtained in

1 connection with the sale or delivery of electric energy to
2 electric consumers.

3 (b) SLAMMING.—The Federal Trade Commission
4 may issue rules prohibiting the change of selection of an
5 electric utility except with the informed consent of the
6 electric consumer or if approved by the appropriate State
7 regulatory authority.

8 (c) CRAMMING.—The Federal Trade Commission
9 may issue rules prohibiting the sale of goods and services
10 to an electric consumer unless expressly authorized by law
11 or the electric consumer.

12 (d) RULEMAKING.—The Federal Trade Commission
13 shall proceed in accordance with section 553 of title 5,
14 United States Code, when prescribing a rule under this
15 section.

16 (e) STATE AUTHORITY.—If the Federal Trade Com-
17 mission determines that a State's regulations provide
18 equivalent or greater protection than the provisions of this
19 section, such State regulations shall apply in that State
20 in lieu of the regulations issued by the Commission under
21 this section.

22 (f) DEFINITIONS.—For purposes of this section:

23 (1) STATE REGULATORY AUTHORITY.—The
24 term "State regulatory authority" has the meaning

1 given that term in section 3(21) of the Federal
2 Power Act (16 U.S.C. 796(21)).

3 (2) ELECTRIC CONSUMER AND ELECTRIC UTIL-
4 ITY.—The terms “electric consumer” and “electric
5 utility” have the meanings given those terms in sec-
6 tion 3 of the Public Utility Regulatory Policies Act
7 of 1978 (16 U.S.C. 2602).

8 “(d) The Commission shall, by rule or order, require
9 each person or other entity engaged in the transportation
10 of natural gas in interstate commerce, or the sale in inter-
11 state commerce of natural gas for resale for ultimate pub-
12 lic consumption for domestic, commercial, industrial, or
13 any other use, and each broker, dealer, and power mar-
14 keter involved in any such transportation or sale, to main-
15 tain, and periodically submit to the Commission, such
16 records, in electronic form, of each transaction relating to
17 such transmission or sale as may be necessary to deter-
18 mine whether any person has employed any fraudulent,
19 manipulative, or deceptive device or contrivance in con-
20 travention of rules promulgated by the Commission.”.

21 **SEC. 1296. SAVINGS PROVISION.**

22 Nothing in this title or in any amendment made by
23 this title shall be construed to affect the authority of any
24 court to make a determination in any proceeding com-
25 menced before the enactment of this Act regarding the au-

1 thority of the Federal Energy Regulatory Commission to
2 permit any person to sell or distribute electric energy at
3 market-based rates.

In section 25C(b)(1)(A) of the Internal Revenue Code of 1986, as proposed to be added by section 1311 of the bill, insert after clause (iii) the following new clauses:

4 (iv) \$150 for each electric heat pump
5 water heater,

6 (v) \$200 for each advanced natural
7 gas, oil, propane furnace, or hot water boiler
8 installed in 2006 (\$150 for equipment
9 installed in 2007, \$100 for equipment in-
10 stalled in 2008),

11 (vi) \$150 for each advanced natural
12 gas, oil, or propane water heater,

13 (vii) \$50 for each mid-efficiency nat-
14 ural gas, oil, or propane water heater,

15 (viii) \$50 for an advanced main air
16 circulating fan which is installed in a fur-
17 nace with an Annual Fuel Utilization Effi-
18 ciency of less than 92 percent,

19 (ix) \$150 for each advanced combina-
20 tion space and water heating system,

- 1 (x) \$50 for each mid-efficiency com-
2 bination space and water heating system,
3 (xi) \$250 for each geothermal heat
4 pump, and
5 (xii) \$250 for each advanced central
6 air conditioner or central heat pump (\$150
7 for equipment installed in 2008).

In section 25C(a) of the Internal Revenue Code of 1986, as proposed to be added by section 1311 of the bill, insert after paragraph (3) the following new paragraph:

- 8 (4) the energy efficient building property de-
9 scribed in clauses (iv) through (xii) of subsection
10 (b)(1)(A).

In section 25C(b) of the Internal Revenue Code of 1986, as proposed to be added by section 1311 of the bill, insert after paragraph (2) the following new paragraph:

- 11 (3) SAFETY CERTIFICATIONS.—No credit shall
12 be allowed under this section for an item of property
13 specified in clause (iv) through (xii) of paragraph
14 (1) unless such property meets the performance and
15 quality standards, and the certification requirements
16 (if any), which—

1 (A) have been prescribed by the Secretary
2 by regulations (after consultation with the Sec-
3 retary of Energy or the Administrator of the
4 Environmental Protection Agency, as appro-
5 priate),

6 (B) in the case of the energy efficiency
7 ratio (EER) for property described in clause
8 (viii) or (ix) of subsection (d)(1)(B)—

9 (i) require measurements to be based
10 on published data which is tested by manu-
11 facturers at 95 degrees Fahrenheit, and

12 (ii) do not require ratings to be based
13 on certified data of the Air Conditioning
14 and Refrigeration Institute, and

15 (C) are in effect at the time of the acquisi-
16 tion of the property.

In section 25C(c) of the Internal Revenue Code of
1986, as proposed to be added by section 1311 of the
bill, add at the end the following new paragraphs:

17 (4) ENERGY EFFICIENT BUILDING PROP-
18 erty.—The term “energy efficient building prop-
19 erty” means—

20 (A) an electric heat pump water heater
21 which yields an energy factor of at least 1.7 in

1 the standard Department of Energy test proce-
2 dure,

3 (B) an advanced natural gas, oil, propane
4 furnace, or hot water boiler which achieves at
5 least 92 percent annual fuel utilization effi-
6 ciency (AFUE) and which has an advanced
7 main air circulating fan,

8 (C) an advanced natural gas, oil, or pro-
9 pane water heater which has an energy factor
10 of at least 0.80 in the standard Department of
11 Energy test procedure,

12 (D) a mid-efficiency natural gas, oil, or
13 propane water heater which has an energy fac-
14 tor of at least 0.65 but less than 0.80 in the
15 standard Department of Energy test procedure,

16 (E) an advanced main air circulating fan
17 which has an annual electricity use of no more
18 than 2 percent of the total annual energy use
19 (as determined in the standard Department of
20 Energy test procedures) and which is used in a
21 new natural gas, propane, or oil-fired furnace,

22 (F) an advanced combination space and
23 water heating system which has a combined en-
24 ergy factor of at least 0.80 and a combined an-
25 nual fuel utilization efficiency (AFUE) of at

1 least 78 percent in the standard Department of
2 Energy test procedure,

3 (G) a mid-efficiency combination space and
4 water heating system which has a combined en-
5 ergy factor of at least 0.65 but less than 0.80
6 and a combined annual fuel utilization effi-
7 ciency (AFUE) of at least 78 percent in the
8 standard Department of Energy test procedure,

9 (H) a geothermal heat pump which has
10 water heating capability by a desuperheater or
11 full-condensing option and which has an energy
12 efficiency ratio (EER) of at least 18 for
13 ground-loop systems, at least 21 for ground-
14 water systems, and at least 17 for direct
15 GeoExchange systems; and

16 (I) a central air conditioner or central heat
17 pump which meets the Energy Star specifica-
18 tions as set by the Environmental Protection
19 Agency. The specifications must be made effec-
20 tive after December 31, 2005, and must be cur-
21 rent as of the date of the expenditure or made
22 effective later in the calendar year of the ex-
23 penditure.

24 (5) LABOR COSTS.—Expenditures for labor
25 costs properly allocable to the onsite preparation, as-

1 sembly, or original installation of the property and
2 for piping or wiring to interconnect property de-
3 scribed in paragraph (4) to the dwelling unit shall
4 be taken into account for purposes of this section.

 In subtitle B of title XIII, add at the end the fol-
lowing:

5 **SEC. 1318. CREDIT FOR CONSTRUCTION OF NEW ENERGY**
6 **EFFICIENT HOMES.**

7 (a) **IN GENERAL.**—Subpart D of part IV of sub-
8 chapter A of chapter 1 (relating to business related cred-
9 its) is amended by adding at the end the following new
10 section:

11 **“SEC. 45K. NEW ENERGY EFFICIENT HOME CREDIT.**

12 “(a) **IN GENERAL.**—For purposes of section 38, in
13 the case of an eligible contractor with respect to a quali-
14 fied new energy efficient home, the credit determined
15 under this section for the taxable year with respect to such
16 home is an amount equal to the aggregate adjusted bases
17 of all energy efficient property installed in such home dur-
18 ing construction of such home.

19 “(b) **LIMITATIONS.**—

20 “(1) **MAXIMUM CREDIT.**—

21 “(A) **IN GENERAL.**—The credit allowed by
22 this section with respect to a dwelling unit shall
23 not exceed—

1 “(i) in the case of a dwelling unit de-
2 scribed in clause (i) or (iii) of subsection
3 (c)(3)(C), \$1,000, and

4 “(ii) in the case of a dwelling unit de-
5 scribed in clause (ii) or (iv) of subsection
6 (c)(3)(C), \$2,000.

7 “(B) PRIOR CREDIT AMOUNTS ON SAME
8 DWELLING UNIT TAKEN INTO ACCOUNT.—If a
9 credit was allowed under subsection (a) with re-
10 spect to a dwelling unit in 1 or more prior tax-
11 able years, the amount of the credit otherwise
12 allowable for the taxable year with respect to
13 such dwelling unit shall be reduced by the sum
14 of the credits allowed under subsection (a) with
15 respect to the dwelling unit for all prior taxable
16 years.

17 “(2) COORDINATION WITH CERTAIN CREDITS.—

18 For purposes of this section—

19 “(A) the basis of any property referred to
20 in subsection (a) shall be reduced by that por-
21 tion of the basis of any property which is attrib-
22 utable to qualified rehabilitation expenditures
23 (as defined in section 47(c)(2)) or to the energy
24 percentage of energy property (as determined
25 under section 48(a)), and

1 “(B) expenditures taken into account
2 under section 47 or 48(a) shall not be taken
3 into account under this section.

4 “(c) DEFINITIONS.—For purposes of this section—

5 “(1) ELIGIBLE CONTRACTOR.—The term ‘eligi-
6 ble contractor’ means—

7 “(A) the person who constructed the quali-
8 fied new energy efficient home, or

9 “(B) in the case of a qualified new energy
10 efficient home which is a manufactured home,
11 the manufactured home producer of such home.

12 If more than 1 person is described in subparagraph
13 (A) or (B) with respect to any qualified new energy
14 efficient home, such term means the person des-
15 ignated as such by the owner of such home.

16 “(2) ENERGY EFFICIENT PROPERTY.—The
17 term ‘energy efficient property’ means any energy
18 efficient building envelope component, and any en-
19 ergy efficient heating or cooling equipment or sys-
20 tem, which can, individually or in combination with
21 other components, result in a dwelling unit meeting
22 the requirements of this section.

23 “(3) QUALIFIED NEW ENERGY EFFICIENT
24 HOME.—The term ‘qualified new energy efficient
25 home’ means a dwelling unit—

1 “(A) located in the United States,

2 “(B) the construction of which is substan-
3 tially completed after the date of the enactment
4 of this section, and

5 “(C) which is—

6 “(i) certified to have a level of annual
7 heating and cooling energy consumption
8 which is at least 30 percent below the an-
9 nual level of heating and cooling energy
10 consumption of a comparable dwelling unit
11 constructed in accordance with the stand-
12 ards of chapter 4 of the 2003 International
13 Energy Conservation Code, as such Code
14 (including supplements) is in effect on the
15 date of the enactment of this section, and
16 for which the heating and cooling equip-
17 ment efficiencies correspond to the min-
18 imum allowed under the regulations estab-
19 lished by the Department of Energy pursu-
20 ant to the National Appliance Energy Con-
21 servation Act of 1987 and in effect at the
22 time of construction, and to have building
23 envelope component improvements account
24 for at least $\frac{1}{3}$ of such 30 percent,

1 “(ii) certified to have a level of annual
2 heating and cooling energy consumption
3 which is at least 50 percent below such an-
4 nual level and to have building envelope
5 component improvements account for at
6 least $\frac{1}{5}$ of such 50 percent,

7 “(iii) a manufactured home which
8 meets the requirements of clause (i) and
9 which conforms to Federal Manufactured
10 Home Construction and Safety Standards
11 (section 3280 of title 24, Code of Federal
12 Regulations), or

13 “(iv) a manufactured home which
14 meets the requirements of clause (ii) and
15 which conforms to Federal Manufactured
16 Home Construction and Safety Standards
17 (section 3280 of title 24, Code of Federal
18 Regulations).

19 “(4) CONSTRUCTION.—The term ‘construction’
20 includes substantial reconstruction and rehabilita-
21 tion.

22 “(5) ACQUIRE.—The term ‘acquire’ includes
23 purchase and, in the case of reconstruction and re-
24 habilitation, such term includes a binding written
25 contract for such reconstruction or rehabilitation.

1 “(6) BUILDING ENVELOPE COMPONENT.—The
2 term ‘building envelope component’ means—

3 “(A) any sealant, insulation material, or
4 system which is specifically and primarily de-
5 signed to reduce the heat loss or gain of a
6 dwelling unit when installed in or on such
7 dwelling unit,

8 “(B) exterior windows (including sky-
9 lights),

10 “(C) exterior doors, and

11 “(D) any metal roof installed on a dwelling
12 unit, but only if such roof has appropriate pig-
13 mented coatings which—

14 “(i) are specifically and primarily de-
15 signed to reduce the heat gain of such
16 dwelling unit, and

17 “(ii) meet the Energy Star program
18 requirements.

19 “(d) CERTIFICATION.—

20 “(1) METHOD OF CERTIFICATION.—A certifi-
21 cation described in subsection (c)(3)(C) shall be de-
22 termined in accordance with guidance prescribed by
23 the Secretary, after consultation with the Secretary
24 of Energy. Such guidance shall specify procedures
25 and methods for calculating energy and cost savings.

1 “(2) FORM.—A certification described in sub-
2 section (c)(3)(C) shall be made in writing in a man-
3 ner which specifies in readily verifiable fashion the
4 energy efficient building envelope components and
5 energy efficient heating or cooling equipment in-
6 stalled and their respective rated energy efficiency
7 performance.

8 “(e) BASIS ADJUSTMENT.—For purposes of this sub-
9 title, if a credit is determined under this section for any
10 expenditure with respect to any property, the increase in
11 the basis of such property which would (but for this sub-
12 section) result from such expenditure shall be reduced by
13 the amount of the credit so determined.

14 “(f) SPECIAL RULE WITH RESPECT TO BUILDINGS
15 WITH ENERGY EFFICIENT PROPERTY.—In any case in
16 which a deduction under section 200 or a credit under sec-
17 tion 25C has been allowed with respect to property in con-
18 nection with a dwelling unit, the level of annual heating
19 and cooling energy consumption of the comparable dwell-
20 ing unit referred to in clauses (i) and (ii) of subsection
21 (c)(3)(C) shall be determined assuming such comparable
22 dwelling unit contains the property for which such deduc-
23 tion or credit has been allowed.

24 “(g) APPLICATION OF SECTION.—

1 “(1) 50 PERCENT HOMES.—In the case of any
2 dwelling unit described in clause (ii) or (iv) of sub-
3 section (c)(3)(C), subsection (a) shall apply to quali-
4 fied new energy efficient homes acquired during the
5 period beginning on the date of the enactment of
6 this section, and ending on December 31, 2009.

7 “(2) 30 PERCENT HOMES.—In the case of any
8 dwelling unit described in clause (i) or (iii) of sub-
9 section (c)(3)(C), subsection (a) shall apply to quali-
10 fied new energy efficient homes acquired during the
11 period beginning on the date of the enactment of
12 this section, and ending on December 31, 2007.”.

13 (b) CREDIT MADE PART OF GENERAL BUSINESS
14 CREDIT.—Section 38(b) (relating to current year business
15 credit) is amended by striking “plus” at the end of para-
16 graph (19), by striking the period at the end of paragraph
17 (18) and inserting “, plus”, and by adding at the end the
18 following new paragraph:

19 “(21) the new energy efficient home credit de-
20 termined under section 45K(a).”.

21 (c) BASIS ADJUSTMENT.—Subsection (a) of section
22 1016 is amended by striking “and” at the end of para-
23 graph (33), by striking the period at the end of paragraph
24 (34) and inserting “, and”, and by adding at the end the
25 following new paragraph:

1 “(35) to the extent provided in section 45K(e),
2 in the case of amounts with respect to which a credit
3 has been allowed under section 45K.”.

4 (d) DEDUCTION FOR CERTAIN UNUSED BUSINESS
5 CREDITS.—Section 196(c) (defining qualified business
6 credits) is amended by striking “and” at the end of para-
7 graph (11), by striking the period at the end of paragraph
8 (12) and inserting “, and”, and by adding after paragraph
9 (12) the following new paragraph:

10 “(13) the new energy efficient home credit de-
11 termined under section 45K(a).”.

12 (e) CLERICAL AMENDMENT.—The table of sections
13 for subpart D of part IV of subchapter A of chapter 1
14 is amended by adding at the end the following new item:

“Sec. 45K. New energy efficient home credit.”.

15 (f) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to taxable years ending after the
17 date of the enactment of this Act.

18 **SEC. 1319. ENERGY EFFICIENT COMMERCIAL BUILDINGS**
19 **DEDUCTION.**

20 (a) IN GENERAL.—Part VI of subchapter B of chap-
21 ter 1 (relating to itemized deductions for individuals and
22 corporations) is amended by inserting after section 179B
23 the following new section:

1 "SEC. 179C. ENERGY EFFICIENT COMMERCIAL BUILDINGS
2 DEDUCTION.

3 "(a) IN GENERAL.—There shall be allowed as a de-
4 duction an amount equal to the cost of energy efficient
5 commercial building property placed in service during the
6 taxable year.

7 "(b) MAXIMUM AMOUNT OF DEDUCTION.—The de-
8 duction under subsection (a) with respect to any building
9 for the taxable year and all prior taxable years shall not
10 exceed an amount equal to the product of—

11 "(1) \$2.25, and

12 "(2) the square footage of the building.

13 "(c) DEFINITIONS.—For purposes of this section—

14 "(1) ENERGY EFFICIENT COMMERCIAL BUILD-
15 ING PROPERTY.—The term 'energy efficient commer-
16 cial building property' means property—

17 "(A) which is installed on or in any build-
18 ing located in the United States,

19 "(B) which is installed as part of—

20 "(i) the interior lighting systems,

21 "(ii) the heating, cooling, ventilation,
22 and hot water systems, or

23 "(iii) the building envelope, and

24 "(C) which is certified in accordance with
25 subsection (d)(6) as being installed as part of
26 a plan designed to reduce the total annual en-

1 ergy and power costs with respect to the inte-
2 rior lighting systems, heating, cooling, ventila-
3 tion, and hot water systems of the building by
4 50 percent or more in comparison to a ref-
5 erence building which meets the minimum re-
6 quirements of Standard 90.1-2001 using meth-
7 ods of calculation under subsection (d)(2).

8 A building described in subparagraph (A) may in-
9 clude any residential rental property, including any
10 low-rise multifamily structure or single family hous-
11 ing property which is not within the scope of Stand-
12 ard 90.1-2001, but shall not include any qualified
13 new energy efficient home (within the meaning of
14 section 45K(d)(3)) for which a credit under section
15 45K has been allowed.

16 “(2) STANDARD 90.1-2001.—The term ‘Stand-
17 ard 90.1-2001’ means Standard 90.1-2001 of the
18 American Society of Heating, Refrigerating, and Air
19 Conditioning Engineers and the Illuminating Engi-
20 neering Society of North America (as in effect on
21 April 2, 2003).

22 “(d) SPECIAL RULES.—

23 “(1) PARTIAL ALLOWANCE.—

24 “(A) IN GENERAL.—Except as provided in
25 subsection (f), if—

1 “(i) the requirement of subsection
2 (c)(1)(C) is not met, but

3 “(ii) there is a certification in accord-
4 ance with paragraph (6) that any system
5 referred to in subsection (c)(1)(B) satisfies
6 the energy-savings targets established by
7 the Secretary under subparagraph (B)
8 with respect to such system,

9 then the requirement of subsection (c)(1)(C)
10 shall be treated as met with respect to such sys-
11 tem, and the deduction under subsection (a)
12 shall be allowed with respect to energy efficient
13 commercial building property installed as part
14 of such system and as part of a plan to meet
15 such targets, except that subsection (b) shall be
16 applied to such property by substituting ‘\$.75’
17 for ‘\$2.25’.

18 “(B) REGULATIONS.—The Secretary, after
19 consultation with the Secretary of Energy, shall
20 establish a target for each system described in
21 subsection (c)(1)(B) which, if such targets were
22 met for all such systems, the building would
23 meet the requirements of subsection (c)(1)(C).

24 “(2) METHODS OF CALCULATION.—The Sec-
25 retary, after consultation with the Secretary of En-

1 ergy, shall promulgate regulations which describe in
2 detail methods for calculating and verifying energy
3 and power consumption and cost, based on the pro-
4 visions of the 2005 California Nonresidential Alter-
5 native Calculation Method Approval Manual or, in
6 the case of residential property, the 2005 California
7 Residential Alternative Calculation Method Approval
8 Manual. These regulations shall meet the following
9 requirements:

10 “(A) In calculating tradeoffs and energy
11 performance, the regulations shall prescribe the
12 costs per unit of energy and power, such as kil-
13 owatt hour, kilowatt, gallon of fuel oil, and
14 cubic foot or Btu of natural gas, which may be
15 dependent on time of usage. If a State has de-
16 veloped annual energy usage and cost calcula-
17 tion procedures based on time of usage costs for
18 use in the performance standards of the State’s
19 building energy code before the effective date of
20 this section, the State may use those annual en-
21 ergy usage and cost calculation procedures in
22 lieu of those adopted by the Secretary.

23 “(B) The calculation methods under this
24 paragraph need not comply fully with section
25 11 of Standard 90.1-2001.

1 “(C) The calculation methods shall be fuel
2 neutral, such that the same energy efficiency
3 features shall qualify a building for the deduc-
4 tion under this section regardless of whether
5 the heating source is a gas or oil furnace or an
6 electric heat pump. The reference building for
7 a proposed design which employs electric resist-
8 ance heating shall be modeled as using a heat
9 pump.

10 “(D) The calculation methods shall provide
11 appropriate calculated energy savings for design
12 methods and technologies not otherwise credited
13 in either Standard 90.1-2001 or in the 2005
14 California Nonresidential Alternative Calcula-
15 tion Method Approval Manual, including the
16 following:

17 “(i) Natural ventilation.

18 “(ii) Evaporative cooling.

19 “(iii) Automatic lighting controls such
20 as occupancy sensors, photocells, and time-
21 clocks.

22 “(iv) Daylighting.

23 “(v) Designs utilizing semi-condi-
24 tioned spaces which maintain adequate

1 comfort conditions without air conditioning
2 or without heating.

3 “(vi) Improved fan system efficiency,
4 including reductions in static pressure.

5 “(vii) Advanced unloading mecha-
6 nisms for mechanical cooling, such as mul-
7 tiple or variable speed compressors.

8 “(viii) The calculation methods may
9 take into account the extent of commis-
10 sioning in the building, and allow the tax-
11 payer to take into account measured per-
12 formance which exceeds typical perform-
13 ance.

14 “(ix) On-site generation of electricity,
15 including combined heat and power sys-
16 tems, fuel cells, and renewable energy gen-
17 eration such as solar energy.

18 “(x) Wiring with lower energy losses
19 than wiring satisfying Standard 90.1-2001
20 requirements for building power distribu-
21 tion systems.

22 “(3) COMPUTER SOFTWARE.—

23 “(A) IN GENERAL.—Any calculation under
24 paragraph (2) shall be prepared by qualified
25 computer software.

1 “(B) QUALIFIED COMPUTER SOFTWARE.—

2 For purposes of this paragraph, the term
3 ‘qualified computer software’ means software—

4 “(i) for which the software designer
5 has certified that the software meets all
6 procedures and detailed methods for calcu-
7 lating energy and power consumption and
8 costs as required by the Secretary,

9 “(ii) which provides such forms as re-
10 quired to be filed by the Secretary in con-
11 nection with energy efficiency of property
12 and the deduction allowed under this sec-
13 tion, and

14 “(iii) which provides a notice form
15 which documents the energy efficiency fea-
16 tures of the building and its projected an-
17 nual energy costs.

18 “(4) ALLOCATION OF DEDUCTION FOR PUBLIC
19 PROPERTY.—In the case of energy efficient commer-
20 cial building property installed on or in public prop-
21 erty, the Secretary shall promulgate a regulation to
22 allow the allocation of the deduction to the person
23 primarily responsible for designing the property in
24 lieu of the public entity which is the owner of such

1 property. Such person shall be treated as the tax-
2 payer for purposes of this section.

3 “(5) NOTICE TO OWNER.—Each certification
4 required under this section shall include an expla-
5 nation to the building owner regarding the energy
6 efficiency features of the building and its projected
7 annual energy costs as provided in the notice under
8 paragraph (3)(B)(iii).

9 “(6) CERTIFICATION.—

10 “(A) IN GENERAL.—The Secretary shall
11 prescribe the manner and method for the mak-
12 ing of certifications under this section.

13 “(B) PROCEDURES.—The Secretary shall
14 include as part of the certification process pro-
15 cedures for inspection and testing by qualified
16 individuals described in subparagraph (C) to
17 ensure compliance of buildings with energy-sav-
18 ings plans and targets. Such procedures shall
19 be comparable, given the difference between
20 commercial and residential buildings, to the re-
21 quirements in the Mortgage Industry National
22 Accreditation Procedures for Home Energy
23 Rating Systems.

24 “(C) QUALIFIED INDIVIDUALS.—Individ-
25 uals qualified to determine compliance shall be

1 only those individuals who are recognized by an
2 organization certified by the Secretary for such
3 purposes.

4 “(e) BASIS REDUCTION.—For purposes of this sub-
5 title, if a deduction is allowed under this section with re-
6 spect to any energy efficient commercial building property,
7 the basis of such property shall be reduced by the amount
8 of the deduction so allowed.

9 “(f) INTERIM RULES FOR LIGHTING SYSTEMS.—
10 Until such time as the Secretary issues final regulations
11 under subsection (d)(1)(B) with respect to property which
12 is part of a lighting system—

13 “(1) IN GENERAL.—The lighting system target
14 under subsection (d)(1)(A)(ii) shall be a reduction in
15 lighting power density of 25 percent (50 percent in
16 the case of a warehouse) of the minimum require-
17 ments in Table 9.3.1.1 or Table 9.3.1.2 (not includ-
18 ing additional interior lighting power allowances) of
19 Standard 90.1–2001.

20 “(2) REDUCTION IN DEDUCTION IF REDUCTION
21 LESS THAN 40 PERCENT.—

22 “(A) IN GENERAL.—If, with respect to the
23 lighting system of any building other than a
24 warehouse, the reduction in lighting power den-
25 sity of the lighting system is not at least 40

1 percent, only the applicable percentage of the
2 amount of deduction otherwise allowable under
3 this section with respect to such property shall
4 be allowed.

5 “(B) APPLICABLE PERCENTAGE.—For
6 purposes of subparagraph (A), the applicable
7 percentage is the number of percentage points
8 (not greater than 100) equal to the sum of—

9 “(i) 50, and

10 “(ii) the amount which bears the same
11 ratio to 50 as the excess of the reduction
12 of lighting power density of the lighting
13 system over 25 percentage points bears to
14 15.

15 “(C) EXCEPTIONS.—This subsection shall
16 not apply to any system—

17 “(i) the controls and circuiting of
18 which do not comply fully with the manda-
19 tory and prescriptive requirements of
20 Standard 90.1–2001 and which do not in-
21 clude provision for bilevel switching in all
22 occupancies except hotel and motel guest
23 rooms, store rooms, restrooms, and public
24 lobbies, or

1 “(ii) which does not meet the min-
2 imum requirements for calculated lighting
3 levels as set forth in the Illuminating Engi-
4 neering Society of North America Lighting
5 Handbook, Performance and Application,
6 Ninth Edition, 2000.

7 “(g) COORDINATION WITH OTHER TAX BENE-
8 FITS.—

9 “(1) NO DOUBLE BENEFIT.—No deduction
10 shall be allowed under subsection (a) with respect to
11 any building for which a credit under section 45K
12 has been allowed.

13 “(2) SPECIAL RULE WITH RESPECT TO BUILD-
14 INGS WITH ENERGY EFFICIENT PROPERTY.—In any
15 case in which a deduction under section 200 or a
16 credit under section 25C has been allowed with re-
17 spect to property in connection with a building, the
18 annual energy and power costs of the reference
19 building referred to in subsection (c)(1)(C) shall be
20 determined assuming such reference building con-
21 tains the property for which such deduction or credit
22 has been allowed.

23 “(h) REGULATIONS.—The Secretary shall promul-
24 gate such regulations as necessary—

1 “(1) to take into account new technologies re-
2 garding energy efficiency and renewable energy for
3 purposes of determining energy efficiency and sav-
4 ings under this section, and

5 “(2) to provide for a recapture of the deduction
6 allowed under this section if the plan described in
7 subsection (c)(1)(C) or (d)(1)(A) is not fully imple-
8 mented.

9 “(i) TERMINATION.—This section shall not apply
10 with respect to property placed in service after December
11 31, 2010.”.

12 (b) CONFORMING AMENDMENTS.—

13 (1) Section 1016(a) is amended by striking
14 “and” at the end of paragraph (34), by striking the
15 period at the end of paragraph (35) and inserting “,
16 and”, and by adding at the end the following new
17 paragraph:

18 “(36) to the extent provided in section
19 179C(e).”.

20 (2) Section 1245(a) is amended by inserting
21 “179C,” after “179B,” both places it appears in
22 paragraphs (2)(C) and (3)(C).

23 (3) Section 1250(b)(3) is amended by inserting
24 before the period at the end of the first sentence “or
25 by section 179C”.

1 (4) Section 263(a)(1) is amended by striking
2 “or” at the end of subparagraph (H), by striking
3 the period at the end of subparagraph (I) and in-
4 serting “, or”, and by inserting after subparagraph
5 (I) the following new subparagraph:

6 “(J) expenditures for which a deduction is
7 allowed under section 179C.”.

8 (5) Section 312(k)(3)(B) is amended by strik-
9 ing “section 179, 179A, or 179B” each place it ap-
10 pears in the heading and text and inserting “section
11 179, 179A, 179B, or 179C”.

12 (c) CLERICAL AMENDMENT.—The table of sections
13 for part VI of subchapter B of chapter 1 is amended by
14 inserting after section 179B the following new item:

“Sec. 179C. Energy efficient commercial buildings deduction.”.

15 (d) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to property placed in service after
17 the date of the enactment of this Act in taxable years end-
18 ing after such date.

19 **SEC. 1320. ENERGY CREDIT FOR COMBINED HEAT AND**
20 **POWER SYSTEM PROPERTY.**

21 (a) IN GENERAL.—Section 48(a)(3)(A) (defining en-
22 ergy property), as amended by this title, is amended by
23 striking “or” at the end of clause (ii), by inserting “or”
24 at the end of clause (iii), and by adding at the end the
25 following:

1 “(iv) combined heat and power system
2 property,”.

3 (b) COMBINED HEAT AND POWER SYSTEM PROP-
4 ERTY.—Section 48 (relating to energy credit), as amended
5 by this title, is amended by adding at the end the following
6 new subsection:

7 “(c) COMBINED HEAT AND POWER SYSTEM PROP-
8 ERTY.—For purposes of subsection (a)(3)(A)(iv)—

9 “(1) COMBINED HEAT AND POWER SYSTEM
10 PROPERTY.—The term ‘combined heat and power
11 system property’ means property comprising a
12 system—

13 “(A) which uses the same energy source
14 for the simultaneous or sequential generation of
15 electrical power, mechanical shaft power, or
16 both, in combination with the generation of
17 steam or other forms of useful thermal energy
18 (including heating and cooling applications),

19 “(B) which has an electrical capacity of
20 not more than 15 megawatts or a mechanical
21 energy capacity of not more than 2,000 horse-
22 power or an equivalent combination of electrical
23 and mechanical energy capacities,

24 “(C) which produces—

1 “(i) at least 20 percent of its total
2 useful energy in the form of thermal en-
3 ergy which is not used to produce electrical
4 or mechanical power (or combination
5 thereof), and

6 “(ii) at least 20 percent of its total
7 useful energy in the form of electrical or
8 mechanical power (or combination thereof),

9 “(D) the energy efficiency percentage of
10 which exceeds 60 percent, and

11 “(E) which is placed in service before Jan-
12 uary 1, 2009.

13 “(2) SPECIAL RULES.—

14 “(A) ENERGY EFFICIENCY PERCENT-
15 AGE.—For purposes of this subsection, the en-
16 ergy efficiency percentage of a system is the
17 fraction—

18 “(i) the numerator of which is the
19 total useful electrical, thermal, and me-
20 chanical power produced by the system at
21 normal operating rates, and expected to be
22 consumed in its normal application, and

23 “(ii) the denominator of which is the
24 lower heating value of the fuel sources for
25 the system.

1 “(B) DETERMINATIONS MADE ON BTU
2 BASIS.—The energy efficiency percentage and
3 the percentages under paragraph (1)(C) shall
4 be determined on a Btu basis.

5 “(C) INPUT AND OUTPUT PROPERTY NOT
6 INCLUDED.—The term ‘combined heat and
7 power system property’ does not include prop-
8 erty used to transport the energy source to the
9 facility or to distribute energy produced by the
10 facility.

11 “(D) PUBLIC UTILITY PROPERTY.—

12 “(i) ACCOUNTING RULE FOR PUBLIC
13 UTILITY PROPERTY.—If the combined heat
14 and power system property is public utility
15 property (as defined in section 168(i)(10)),
16 the taxpayer may only claim the credit
17 under subsection (a) if, with respect to
18 such property, the taxpayer uses a normal-
19 ization method of accounting.

20 “(ii) CERTAIN EXCEPTION NOT TO
21 APPLY.—The matter in subsection (a)(3)
22 which follows subparagraph (D) thereof
23 shall not apply to combined heat and
24 power system property.

1 “(E) NONAPPLICATION OF CERTAIN
2 RULES.—For purposes of determining if the
3 term ‘combined heat and power system prop-
4 erty’ includes technologies which generate elec-
5 tricity or mechanical power using back-pressure
6 steam turbines in place of existing pressure-re-
7 ducing valves or which make use of waste heat
8 from industrial processes such as by using or-
9 ganic rankine, stirling, or kalina heat engine
10 systems, paragraph (1) shall be applied without
11 regard to subparagraphs (A), (C), and (D)
12 thereof.

13 “(3) SYSTEMS USING BAGASSE.—If a system is
14 designed to use bagasse for at least 90 percent of
15 the energy source—

16 “(A) paragraph (1)(D) shall not apply, but

17 “(B) the amount of credit determined
18 under subsection (a) with respect to such sys-
19 tem shall not exceed the amount which bears
20 the same ratio to such amount of credit (deter-
21 mined without regard to this paragraph) as the
22 energy efficiency percentage of such system
23 bears to 60 percent.

24 “(c) EFFECTIVE DATE.—The amendments made by
25 this subsection shall apply to periods after December 31,

1 2005, in taxable years ending after such date, under rules
2 similar to the rules of section 48(m) of the Internal Rev-
3 enue Code of 1986 (as in effect on the day before the date
4 of the enactment of the Revenue Reconciliation Act of
5 1990).

6 **SEC. 1320A. EXTENSION THROUGH 2010 FOR PLACING**
7 **QUALIFIED FACILITIES IN SERVICE FOR PRO-**
8 **DUCING RENEWABLE ELECTRIC ENERGY.**

9 (a) IN GENERAL.—Subsection (d) of section 45 is
10 amended by striking “January 1, 2006” each place it ap-
11 pears and inserting “January 1, 2011”.

12 (b) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to property originally placed in
14 service on or after January 1, 2006.

At the end of title XIII, insert after subtitle C the
following new subtitle:

15 **Subtitle D—Method of Accounting**
16 **for Oil, Gas, and Primary Prod-**
17 **ucts Thereof**

18 **SEC. 1331. PROHIBITION ON USING LAST IN, FIRST-OUT AC-**
19 **COUNTING FOR OIL, GAS, AND PRIMARY**
20 **PRODUCTS THEREOF.**

21 (a) IN GENERAL.—Section 472 (relating to last-in,
22 first-out inventories) is amended by adding at the end the
23 following new subsection:

1 “(h) OIL AND GAS.—Notwithstanding any other pro-
2 vision of this section—

3 “(1) oil, gas, and any primary product of oil or
4 gas, shall be inventoried separately, and

5 “(2) a taxpayer may not use the method pro-
6 vided in subsection (b) in inventorying oil, gas, and
7 any primary product of oil or gas.”.

8 (b) EFFECTIVE DATE AND SPECIAL RULE.—

9 (1) IN GENERAL.—The amendment made by
10 subsection (a) shall apply to taxable years beginning
11 after the date of the enactment of this Act.

12 (2) CHANGE IN METHOD OF ACCOUNTING.—In
13 the case of any taxpayer required by the amendment
14 made by this section to change its method of ac-
15 counting for its first taxable year beginning after the
16 date of the enactment of this Act—

17 (A) such change shall be treated as initi-
18 ated by the taxpayer,

19 (B) such change shall be treated as made
20 with the consent of the Secretary of the Treas-
21 ury, and

22 (C) the net amount of the adjustments re-
23 quired to be taken into account by the taxpayer
24 under section 481 of the Internal Revenue Code
25 of 1986 shall be taken into account ratably over

1 a period (not greater than 10 taxable years) be-
2 ginning with such first taxable year.

3 **SEC. 1332. EMERGING TECHNOLOGIES TRUST FUND.**

4 (a) IN GENERAL.—Subchapter A of chapter 98 (re-
5 lating to trust fund code) is amended by adding at the
6 end the following new section:

7 **“SEC. 9511. EMERGING TECHNOLOGIES TRUST FUND.**

8 “(a) CREATION OF TRUST FUND.—There is estab-
9 lished in the Treasury of the United States a trust fund
10 to be known as the ‘Emerging Technologies Trust Fund’,
11 consisting of such amounts as may be appropriated or
12 credited to such Trust Fund as provided in this section
13 or section 9602(b).

14 “(b) TRANSFERS TO TRUST FUND.—

15 “(1) IN GENERAL.—There are hereby appro-
16 priated to the Emerging Technologies Trust Fund
17 amounts equivalent to the taxes received in the
18 Treasury by reason of section 472(h) (relating to
19 prohibition on use of last-in, first-out inventory ac-
20 counting for oil and gas).

21 “(2) LIMITATION.—The amount appropriated
22 to the Trust Fund under paragraph (1) for any fis-
23 cal year shall not exceed \$5,000,000,000.

24 “(c) EXPENDITURES.—Amounts in the Emerging
25 Technologies Trust Fund shall be available to the Sec-

1 retary of Energy to carry out a program to research and
2 develop emerging technologies for more efficient and re-
3 newable energy sources.”.

4 (b) CLERICAL AMENDMENT.—The table of sections
5 for such subchapter is amended by adding at the end
6 thereof the following new item:

“Sec. 9511. Emerging Technologies Trust Fund.”.

In title XIV, add at the end the following new sections:

7 **SEC. 1452. SMALL BUSINESS COMMERCIALIZATION ASSIST-**
8 **ANCE.**

9 (a) AUTHORITY.—The Secretary of Energy shall pro-
10 vide assistance, to small businesses with less than 100 em-
11 ployees and startup companies, for the commercial appli-
12 cation of renewable energy and energy efficiency tech-
13 nologies developed by or with support from the Depart-
14 ment of Energy. Such assistance shall be provided through
15 a competitive review process.

16 (b) APPLICATIONS.—The Secretary of Energy shall
17 establish requirements for applications for assistance
18 under this section. Such applications shall contain a com-
19 mercial application plan, including a description of the fi-
20 nancial, business, and technical support (including sup-
21 port from universities and national laboratories) the appli-
22 cant anticipates in its commercial application effort.

1 (c) **SELECTION.**—The Secretary of Energy shall se-
2 lect applicants to receive assistance under this section on
3 the basis of which applications are the most likely to result
4 in commercial application of renewable energy and energy
5 efficiency technologies.

6 (d) **LIMIT ON FEDERAL FUNDING.**—The Secretary of
7 Energy shall provide under this section no more than 50
8 percent of the costs of the project funded.

9 (e) **AUTHORIZATION OF APPROPRIATIONS.**—There
10 are authorized to be appropriated to the Secretary of En-
11 ergy for carrying out this section \$200,000,000 for each
12 of the fiscal years 2006 through 2010, and such sums as
13 may be necessary for each of the fiscal years 2011 through
14 2026.

15 **SEC. 1453. SENSE OF THE CONGRESS.**

16 It is the sense of the Congress that the President
17 should direct the Federal Trade Commission and Attorney
18 General to exercise vigorous oversight over the oil markets
19 to protect the American people from price gouging and
20 unfair practices at the gasoline pump.

21 **SEC. 1454. TRANSPARENCY.**

22 The Federal Trade Commission, in consultation with
23 the Secretary of Energy, shall issue regulations requiring
24 full disclosure by refiners and distributors of their whole-
25 sale motor fuel pricing policies, with a separate listing of

1 each component contributing to prices, including the cost
2 of crude oil (with exploration, extraction, and transpor-
3 tation costs shown separately if the refiner or distributor
4 is also the producer of the crude oil), refining, marketing,
5 transportation, equipment, overhead, and profit, along
6 with ption of any rebates, incentives, and market enhance-
7 ment allowances.

In title XVI, add at the end the following new sec-
tion:

8 **SEC. 1614. STUDY OF FINANCING FOR PROTOTYPE TECH-**
9 **NOLOGIES.**

10 (a) **INDEPENDENT ASSESSMENT.**—The Secretary of
11 Energy shall commission an independent assessment of in-
12 novative financing techniques to facilitate construction of
13 new renewable energy and energy efficiency facilities that
14 might not otherwise be built in a competitive market.

15 (b) **CONDUCT OF THE ASSESSMENT.**—The Secretary
16 of Energy shall retain an independent contractor with
17 proven expertise in financing large capital projects or in
18 financial services consulting to conduct the assessment
19 under this section.

20 (c) **CONTENT OF THE ASSESSMENT.**—The assess-
21 ment shall include a comprehensive examination of all
22 available techniques to safeguard private investors against
23 risks (including both market-based and government-im-

1 posed risks) that are beyond the control of the investors.
2 Such techniques may include Federal loan guarantees,
3 Federal price guarantees, special tax considerations, and
4 direct Federal investment.

5 (d) REPORT.—The Secretary of Energy shall submit
6 the results of the independent assessment to the Congress
7 not later than 9 months after the date of enactment of
8 this section.